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RECORD, CASE No. 14,488.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., ~~652.~~ 386 89

GEORGE F. DICK, APPELLANT,

vs.

JOSEPH B. FORAKER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED FEBRUARY 21, 1891.

RECORD, CASE No. 14,488.

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OCTOBER TERM, 1892.

TERM No., 652.

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vs.

JOSEPH B. FORAKER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 13, 1893.

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1 Be it remembered that on the 18th day of February, 1889, came into the office of the clerk of the circuit court of the United States for the western division of the eastern district of Arkansas Joseph B. Foraker, by Dan. W. Jones and W. T. Wooldridge, Esqrs., his solicitors, and filed therein, on the chancery side of said court, his bill of complaint against George F. Dick; which bill is in the words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Arkansas.

JOSEPH B. FORAKER
v.
GEORGE F. DICK.

To the judges of the circuit court of the United States for the eastern district of Arkansas:

Joseph B. Foraker, of Columbus, Ohio, and a citizen of the State of Ohio, brings this his bill against George F. Dick, of Bloom-
2 ington, Illinois, and a citizen of the State of Illinois; and thereupon your orator complains and says that at a certain sale made at the court-house door, in the town of Hamburg, in Ashley county and State of Arkansas, on the 15th day of September, 1884, by Thomas S. Stillwell, as commissioner duly appointed and acting under and by virtue of a decree rendered in the circuit court of said Ashley county, in chancery, on the second day of June, 1884, in a certain suit instituted in said court by the State of Arkansas on the relation of W. A. Arnold against certain lands in said county upon which taxes were then due, under the provisions of an act of the General Assembly of the State of Arkansas entitled "An act to enforce the payment of overdue taxes," approved March 12, 1881, and the act amendatory thereof, approved March 22, 1881, your orator was the purchaser of the following-described, among other, lands, which are situate in said Ashley county, within the eastern district of the State of Arkansas, to wit: The southeast quarter, the east half of the north-
3 west quarter, the southeast quarter of the southwest quarter, and the east half of the northeast quarter of section six (6); the east half of the northwest quarter, the east half and the west half of the southwest quarter of section seven (7); the north half of the northwest quarter, the southwest quarter of the northwest quarter, the northwest quarter of the southwest quarter, the northeast quarter of the southwest quarter, the south half of the southwest quarter, the south half of the southeast quarter, and the north half of the southeast quarter of section eight (8); the northwest quarter, the northeast quarter, the southeast quarter, and the east half of the southwest quarter of section seventeen (17); the west half of the northwest quarter, the northeast quarter of the northwest quarter, the north half of the northeast quarter, and the southeast quarter

of the northeast quarter of section eighteen (18); the north
4 half of the northeast quarter and the northeast quarter of the northwest quarter of section twenty (20), all in township seventeen (17) south and range five (5) west, the same being of the value of four thousand dollars, for which your orator then and there forthwith paid to said commissioner the amount of taxes, penalty, and costs decreed against said lands, including the cost of advertising, and received from said commissioner a certificate of sale, by him duly executed, describing said lands and the price for which they were sold, which is herewith filed, marked Exhibit A, and prayed to be taken and considered as part of this bill.

And your orator further states that the said commissioner duly reported his proceedings to said circuit court of Ashley county, according to the provisions of the statute aforesaid, and the said report was in all things by said court duly approved and confirmed;
5 that the lands so sold and purchased by your orator not having been redeemed within the period prescribed therefor by the act aforesaid, the said circuit court ordered said commissioner to execute to your orator a deed conveying to him the lands so bought by him in fee simple, in compliance with which order the said commissioner thereafter, to wit, on the 14th day of May, 1887, duly executed said deed, and the same, being approved by said court, was delivered to your orator and was on the same day duly filed for record and recorded in the office of the clerk of the circuit court and *ex officio* recorder for said Ashley county, a true copy of which, marked Exhibit B, is herewith filed and prayed to be taken and considered as part of this bill.

And your orator further states that after his said purchase of the lands herein described at said overdue tax sale, to wit, on the 18th day of March, 1885, the defendant, George F. Dick, applied to the commissioner of State lands of the State of Arkansas to pur-
6 chase the same lands from said State as lands forfeited for the non-payment of taxes due thereon, and that the Hon. Paul M. Cobbs, as such commissioner of State lands, wrongfully and without authority of law and in ignorance of your orator's rights in the premises, or in total disregard thereof, accepted such application of said defendant and sold said lands to him, delivering to him two deeds duly executed by said commissioner, which deeds were afterwards recorded in said Ashley county, and together purport to convey to said defendant, among other —, all of the said lands so by your orator purchased as aforesaid; and your orator herewith files copies of said deeds, marked respectively Exhibit- C & D, and prays that the same may be taken and considered as part of this bill; and your orator further states that all of the said lands are arid, unimproved, and unoccupied, and are in the actual possession of neither your orator nor said defendant; that your orator
7 is the actual owner of said lands by virtue of his said purchase thereof and the deeds to him, executed and delivered as aforesaid; that the defendant is claiming to be the owner thereof by virtue of the deeds wrongfully and without authority of law ex-

ecuted and delivered to him by said commissioner of State lands; that said deeds, while conveying no valid title to defendant, are nevertheless a cloud upon the title of your orator in and to said lands and lessen and impair the value thereof.

To the end, therefore, that your orator may have that relief which he can only obtain in a court of equity, and that the defendant may answer the premises, but not upon oath or affirmation, the benefit whereof is expressly waived by your orator, and that the said two deeds executed and delivered by the said Paul M. Cobbs, commissioner of State lands of the State of Arkansas, to the said defendant on the 18th day of March, 1885, may be given up and can-
8 celled so far as they purport to convey any of the lands herein mentioned and described, and that the said defendant, his heirs and assigns, be perpetually restrained and enjoined from setting up or claiming title to said lands or any or any part or portion of them by reason of said deeds or either of them or of anything in them or either of them contained, and that the title in said lands be quieted in your orator, his heirs and assigns, and for such further and other relief as the nature of this case may require and to your honors seem meet, may it please your honors to grant unto your orator a writ of subpœna, to be directed to the said George F. Dick, thereby commanding him, at a certain time and under a certain penalty therein to be limited, personally to appear before your honors in this honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand, to perform, and abide such further order, direction, and decree therein as to your honors shall seem agreeable to equity and good conscience.

W. T. WOOLDRIDGE &
DAN'L W. JONES,
For Complainant.

9 We undertake to pay all costs of this suit, this Feb'y 16, 1889.

Z. T. HEDGES.
DAN'L W. JONES.

EXHIBIT A.

Certificate of Sale.

This certifies that in pursuance of a decree rendered in the Ashley circuit court, in chancery sitting, on the 2d day of June, 1884, in a cause therein pending, wherein the State of Arkansas on the relation of W. A. Arnold was plaintiff and certain lands on which taxes were alleged to be due were defendant, condemning to be sold for non-payment of taxes, I, Thos. S. Stillwell, as commissioner of said court, having had said lands duly advertised, according to law and said decree, in the Hamburg News, a newspaper published at Hamburg, in the county of Ashley, did, on the 15th day of September, 1884, expose at public vendue, before the court-house door, in

said town of Hamburg, between the hours of ten o'clock a. m.
10 and four o'clock p. m. of said day, the following lands, viz:

The	N. ½ of S. E. ¼ sec. 8, T. 17 S., R. 5 W.	80	
	S. ½ of S. E. ¼ sec. 8, T. 17 S., R. 5 W.	80	
	W. ½ of N. W. ¼ sec. 18, T. 17 S., R. 5 W.	80	
	N. E. ¼ of N. W. ¼ sec. 18, T. 17 S., R. 5 W.	40	
	N. ½ of N. E. ¼ sec. 18, T. 17 S., R. 5 W.	80	
	S. E. ¼ of N. E. ¼ sec. 18, T. 17 S., R. 5 W.	40	
	N. W. ¼ sec. 17, T. 17 S., R. 5 W.	160	acres.
		560	acres.

And Joseph B. Foraker having bid the sum of fifteen cents per acre for said tracts and no one offering to pay the taxes, penalties, and costs decreed against said lands for a less portion than the whole of said tracts, the same were sold to him at said price, and the sum of eighty-four dollars paid to me.

In witness whereof I have hereunto set my hand and seal.

TOM STILLWELL, *Com'r.* [SEAL.]

Certificate of Sale.

This certifies that in pursuance of a decree rendered in the Ashley circuit court, in chancery sitting, on the 2d day of June,
11 1884, in a cause therein pending, wherein the State of Arkansas on the relation of W. A. Arnold was plaintiff and certain lands on which taxes were alleged to be due were defendant, condemning them to be sold for non-payment of taxes, I, Thos. Stillwell, as commissioner of said court, having had said land duly advertised, according to law and said decree, in the Hamburg News, a newspaper published at Hamburg, in the county of Ashley, did, on the 15th day of September, 1884, expose at public vendue, before the court-house door, in said town of Hamburg, between the hours of ten o'clock a. m. and fo-r o'clock p. m. of said day, the following lands, viz:

The	N. E. ¼ of sec. 17, T. 17 S., R. 5 W.	160
	S. E. ¼ of sec. 17, T. 17 S., R. 5 W.	160
	E. ½ S. W. — sec. 17, T. 17 S., R. 5 W.	80
	N. E. ¼ sec. 20, T. 17 S., R. 5 W.	160
	N. E. — N. W. — sec. 20, T. 17 S., R. 5 W.	40

containing six hundred acres.

And Joseph B. Foraker having bid the sum of fifteen cents per acre for said tracts and no one offering to pay the taxes, pen-
12 alties, and costs decreed against said lands for a less portion than the whole of said tracts, the same were sold to him at said price, and the sum of ninety dollars paid to me.

In witness whereof I have hereunto set my hand and seal.

TOM STILLWELL, *Comm'r.* [SEAL.]

Certificate of Sale.

This certifies that in pursuance of a decree rendered in the Ashley circuit court, in chancery sitting, on the 2d day of June, 1884, in a cause therein pending, wherein the State of Arkansas on the relation of W. A. Arnold was plaintiff and certain lands on which taxes were alleged to be due were defendant, condemning them to be sold for non-payment of taxes, I, Thos. S. Stillwell, as commissioner of said court, having had said land duly advertised, according to law and said decree, in the Hamburg News, a newspaper published at Hamburg, in the county of Ashley, did, on the 15th day of September, 1884, expose at public auction, before the
13 court-house door, in said town of Hamburg, between the hours of ten o'clock a. m. and four o'clock p. m. of said day, the following lands, viz:

E. ½ of sec. 7, T. 17 S., R. 5 W.	320
W. ½ of S. W. ¼ sec. 7, T. 17 S., R. 5 W.	80
N. ½ of N. W. ¼ sec. 8, T. 17 S., R. 5 W.	80
S. W. ¼ of N. W. ¼ sec. 8, T. 17 S., R. 5 W.	40
S. E. ¼ of N. W. ¼ sec. 8, T. 17 S., R. 5 W.	40
N. W. ¼ of S. W. ¼ sec. 8, T 17 S., R. 5 W.	40
N. E. ¼ of S. W. ¼ sec. 8, T. 17 S., R. 5 W.	40
S. ½ of S. W. ¼ sec. 8, T. 17 S., R. 5 W.	80

And Joseph B. Foraker having bid the sum of fifteen cents per acre for said tracts and no one offering to pay the taxes, penalties, and costs decreed against said lands for a less portion than the whole of said tracts, the same were sold to him at said price, and the sum of one hundred and eight dollars paid to me.

In witness whereof I have hereunto set my hand and seal.

TOM STILLWELL, *Comm'r.* [SEAL.]

Certificate of Sale.

This certifies that in pursuance of a decree rendered in the
14 Ashley circuit court, in chancery sitting, on the 2d day of June, 1884, in a cause therein pending, wherein the State of Arkansas on the relation of W. A. Arnold was plaintiff and certain lands on which taxes were alleged to be due were defendant, condemning them to be sold for non-payment of taxes, I, Thos. S. Stillwell, as commissioner of said court, having had said lands duly advertised, according to law and said decree, in the Hamburg News, a newspaper published at Hamburg, in the county of Ashley, did, on the 15th day of September, 1884, expose at public vendue, before the court-house door, in said town of Hamburg, between the hours of ten o'clock a. m. and four o'clock p. m. of said day, the following lands, viz:

S. E. ¼ of sec. 6, T. 17 S., R. 5 W.	160
E. ½ N. W. ¼ of sec. 6, T. 17 S., R. 5 W.	80
S. W. ¼ of sec. 6, T. 17 S., R. 5 W.	160

E. ½ N. E. ¼ of sec. 6, T. 17 S., R. 5 W. 80
E. ½ N. W. — of sec. 7, T. 17 S., R. 5 W. 80

amounting to five hundred and sixty acres; and Joseph B. Foraker having bid the sum of fifteen cents per acre for said tracts
15 and no one offering to pay the taxes, penalties, and costs decreed against said lands for a less portion than the whole of said tracts, the same were sold to him at said price, and the sum of eighty-four dollars paid to me.

In witness whereof I have hereunto set my hand and seal.

TOM STILLWELL, *Comm'r.* [SEAL.]

EXHIBIT B.

T. S. Stillwell, comm'r, to Joseph B. Foraker. } Deed.

Know all men by these presents that whereas a decree was rendered in the Ashley circuit court on the 2d day of June, 1884, in a cause therein pending, wherein the State of Arkansas on the relation of W. H. Arnold was plaintiff and certain lands on which taxes were alleged to be due were defendant, condemning to be sold for non-payment of taxes the following tracts or lots of land lying in Ashley county, to wit:

S. E. ¼ of sec. 6, T. 17 S., R. 5 W. 160
E. ½ N. W. ¼ of sec. 6, T. 17 S., R. 5 W. 80
E. ½ N. E. ¼ of sec. 6, T. 17 S., R. 5 W. 80
S. W. ¼ of sec. 6, T. 17 S., R. 5 W. 160
16 E. ½ N. W. ¼ of sec. 7, T. 17 S., R. 5 W. 80
E. ½ of sec. 7, T. 17 S., R. 5 W. 320
W. ½ S. W. ¼ of sec. 7, T. 17 S., R. 5 W. 80
N. ½ N. W. of sec. 8, T. 17 S., R. 5 W. 80
S. W. ¼ N. W. ¼ of sec. 8, T. 17 S., R. 5 W. 40
S. E. N. W. of sec. 8, T. 17 S., R. 5 W. 40
N. W. S. W. of sec. 8, T. 17 S., R. 5 W. 40
N. E. S. W. of sec. 8, T. 17 S., R. 5 W. 40
S. ½ S. W. of sec. 8, T. 17 S., R. 5 W. 80
N. ½ S. E. ¼ of sec. 8, T. 17 S., R. 5 W. 80
S. ½ S. E. of sec. 8, T. 17 S., R. 5 W. 80
W. ½ N. W. of sec. 18, T. 17 S., R. 5 W. 80
N. E. N. W. of sec. 18, T. 17 S., R. 5 W. 40
N. ½ N. E. of sec. 18, T. 17 S., R. 5 W. 80
S. E. N. E. of sec. 18, T. 17 S., R. 5 W. 40
N. W. ¼ of sec. 17, T. 17 S., R. 5 W. 160
N. E. ¼ of sec. 17, T. 17 S., R. 5 W. 160
S. E. ¼ of sec. 17, T. 17 S., R. 5 W. 160
E. ½ S. W. ¼ of sec. 17, T. 17 S., R. 5 W. 80
N. E. ¼ of sec. 20, T. 17 S., R. 5 W. 160
N. E. N. W. of sec. 20, T. 17, S., R. 5 W. 40
W. ½ S. E. ¼ of sec. 20, T. 17 S., R. 5 W. 80

W. ½ N. E. of sec. 29, T. 17 S., R. 5 W. 80
S. ½ N. W. ¼ of sec. 29, T. 17 S., R. 5 W. 80
S. W. ¼ of sec. 29, T. 17 S., R. 5 W. 160
S. E. ¼ of sec. 30, T. 17 S., R. 5 W. 160

And whereas said lands were sold to Joseph B. Foraker for
17 the sum of three hundred and thirty dollars (330), which sum has been paid by him to me, as required by law; and whereas the time allowed by law for redemption has expired and I, Thos. S. Stillwell, as commissioner appointed by said court in said cause and directed by the court to execute a deed of conveyance conveying said lands to him:

Therefore, in consideration of said sum and of the premises aforesaid, I as such commissioner do hereby grant, sell, and convey unto said Joseph B. Foraker and unto his heirs and assigns forever the lands above described.

Witness my hand as such commissioner on this 14th day of May, 1887.

TOM STILLWELL, *Com'r.* [SEAL.]

STATE OF ARKANSAS, }
County of Ashley. }

Be it remembered that on this day came before the undersigned, a county clerk within and for the county aforesaid, duly commissioned and acting, Tom Stillwell, com'rs, to me well known
18 as the grantor in the foregoing deed, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth.

Witness my hand and seal as such county clerk on this 14th day of May, 1887.

[SEAL.] Z. P. STILL, *Clerk.*

Approved in open court May 14, 1887.

A. C. JONES,
Special Judge.

Filed and duly recorded May 14, 1887.

Z. P. STILL, *Clerk.*

STATE OF ARKANSAS, }
County of Ashley. }

I, Z. P. Still, clerk of the circuit court and *ex officio* clerk of the county court and recorder, do hereby certify that the foregoing deed is a true copy of a deed on record in my office from Thos. Stillwell, as com'rs, to J. B. Foraker, as shown by Record X, page 21.

Witness my hand and seal as such clerk this 13th day of February, 1888.

[L. S.] Z. P. STILL, *Clerk.*

19 EXHIBIT C.

Deeds for Forfeited Lands Sold.

No. 6350.

The State of Arkansas to all to whom these presents shall come, Greeting:

Know ye that the following-described lands, situated in the county of Ashley, in the State of Arkansas, *was* forfeited to the State for the non-payment of the taxes for the years 1865, 1868, 1869, 1870, 1878, & 1871, as follows, to wit:

	S. ½ S. W. ¼	sec.	5,	T. 17 S.,	R. 5 W.	80
1870 & 1871.	E. ½ N. E. ¼	"	6,	"	----	76.68
1865.	S. E. ¼	"	6,	"	----	160
"	S. E. ¼ S. W. ¼	"	6,	"	----	40
"	E. ½	"	7,	"	----	320
"	E. ½ N. W.	"	7,	"	----	80
"	Frl. W. ½ S. W. ¼	"	7,	"	----	40
1868.	N. E. ¼ N. E.	"	8,	"	----	40
1868.	N. ½ N. W. ¼	"	8,	"	----	80
"	S. W. N. W.	"	8,	"	----	40
"	N. W. S. W.	"	8,	"	----	40
"	S. ½ S. ½	"	8,	"	----	160
1865, '69, '70.	E. ½	"	17,	"	----	320
1870, '1.	N. W. ¼	"	17,	"	----	160
1865, '70, & '71.	E. ½ S. W. ¼	"	17,	"	----	80
	S. E. N. E.	"	18,	"	----	40
20	N. ½ N. E.	sec.	18,	T. 17 S.,	R. 5 W.	80
	N. E. N. W. ¼	"	18,	"	----	40
1868.	Frl. ½ W. ½ N. W.	"	18,	"	----	39.43
1870 & '71.	E. ½ S. E. ¼	"	18,	"	----	80

That the same now appears on the books of this office as vacant and subject to sale, and George F. Dick having applied to purchase the same and having paid into the State treasury the sum of nine hundred and ninety-eight — ($998.15) and fifteen cents, the amount required to purchase said lands under an act amendatory of existing laws regulating the sale of the lands of the State, approved December 13th, 1875, and March 10th, 1879:

Therefore know ye that I, P. M. Cobb, commissioner of State lands for the State of Arkansas, for and in consideration of the premises and by virtue of an act to authorize the commissioner of State lands to make deeds in certain cases, approved December 13th, 1875, do by these presents grant and convey to the said above-named applicant, and to his successors, heirs, and assigns forever all the
21 right, title, interest, & claim of the State of Arkansas thereto; to have and to hold the same as were held or owned by the State unto the said grantee and to his successors, heirs, and assigns forever.

In testimony whereof I, P. M. Cobb, commissioner of State lands for the State of Arkansas, have hereunto set my hand and affixed my official seal, at Little Rock, Arkansas, this 18th day of March, A. D. 1885.

PAUL M. COBB,
Commissioner State Lands.

Purchase	$998 15
Deed	1 00
	999 15

Filed for record March 12th, 1886. Duly recorded same day.
E. L. THOMSON, *Clerk.*
B. NEWTON, *D. C.*

STATE OF ARKANSAS, }
County of Ashley. }

I, Z. P. Still, clerk of the circuit court and *ex officio* clerk of the county court and recorder, do hereby certify that the above is a true copy of a deed recorded in my office in Book W, page 354, State of Arkansas to George F. Dick.

22 Witness my hand and seal this 13th day of Feb'y, 1888.
[L. S.] Z. P. STILL, *Clerk.*

EXHIBIT D.

Deed for Forfeited Lands Sold.

No. 6352.

The State of Arkansas to all to whom these presents shall come, Greeting:

Know ye that the following-described lands, situated in the county of Ashley, in the State of Arkansas, *was* forfeited to the State for the non-payment of the taxes for the years 1870 & 1871, as follows, to wit:

1870 & '71.	N. ½ N. E. ¼	sec. 20, T. 17 S., R. 5 W.	80
"	N. E. ¼ N. W. ¼	" 20, "	40

That the same now appears on the books of this office as vacant and subject to sale, and George F. Dick, trustee, having applied to purchase the same and having paid into the State treasury the sum of sixty & $\frac{65}{100}$ dollars, the amount required to purchase said lands under an act amendatory of existing laws regulating the sale
23 of the lands of the State, approved December 13, 1875, and March 10, 1879:

Therefore know ye that I, P. M. Cobb, commissioner of State lands for the State of Arkansas, for and in consideration of the premises and by virtue of an act to authorize the commissioner of State lands to make deeds in certain cases, approved December 13, 1875, do by these presents grant and convey to the said above-named applicant and to his successors, heirs, and assigns forever all the

right, title, interest, and claims of the State of Arkansas thereto; to have and to hold the same as now held or owned by the State unto the said grantee and to his successors, heirs, and assigns forever.

In testimony whereof I, Paul M. Cobb, commissioner of State lands for the State of Arkansas, have hereunto set my hand and affixed my official seal, at Little Rock, Arkansas, this 18th day of March, A. D. 1888.

[L. S.]

PAUL M. COBB,
Commissioner State Lands.

Purchase	68 00
Deed	1 00
	69 00

24 Filed for record March 12, 1886.
Duly recorded same day.

E. L. THOMSON, *Clerk.*
B. NEWTON, *D. C.*

STATE OF ARKANSAS, }
County of Ashley. }

I, Z. P. Still, clerk of the circuit court and *ex officio* clerk of the county court and recorder, do hereby certify that the above is a true copy of a deed recorded in my office in Record "M," page 358.

Witness my hand and seal as such clerk this 13th day of Feb'y, 1888.

Z. P. STILL, *Clerk.*

Filed and writ issued February 18, 1889.

RALPH L. GOODRICH, *Clerk,*
By W. P. FEILD, *D. C.*

25 UNITED STATES OF AMERICA, }
Western Division of the Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the western division of the eastern district of Arkansas, begun and holden on Monday, the 8th day of April, anno Domini one thousand eight hundred and eighty-nine, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit:

On Ap-il 25, 1889:

JOSEPH B. FORAKER }
v.
GEORGE F. DICK. }

Comes the defendant, by W. S. McCain, Esq., his solicitor, and files herein his demurrer to the bill.

(The demurrer is not on file in the case.)

And on July 29, 1889, as follows:

J. B. FORAKER
v.
GEO. F. DICK.

26 Comes the complainant, by Dan. W. Jones, Esq., his solicitor, and comes the defendant, by W. S. McCain, Esq., his solicitor, and said defendant appears by his said solicitor and moves to dismiss this cause for want of jurisdiction; which motion is denied.

27 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas.

Be it remembered that at a circuit court of the United States of America in and for the western division of the eastern district of Arkansas, begun and holden on Monday, the 28 day of October, anno Domini one thousand eight hundred and eighty-nine, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit:

On November 6, 1889:

JOSEPH B. FORAKER
v.
GEORGE F. DICK.

Comes the defendant, by A. W. Files and W. S. McCain, Esqrs., his solicitors, and files herein his answer.

Which answer is as follows:

Defendant, for answer to the bill, admits the citizenship of the parties as stated in the bill.

The defendant says that the lands sued for herein and described in the complaint had, before the first day of January, 1882,
28 been forfeited to the State of Arkansas for taxes, and from that day until the 18th day of March, 1885, all the lands sued for and described in the bill *was* owned by the State of Arkansas in fee simple, and on the day and year last aforesaid said lands were conveyed to defendant by the State through her land commissioner, as alleged by the deeds exhibited with the bill.

The defendant denies that the said land was ever sold under any decree of the Ashley circuit court, as alleged, and says that the pretended decree was and is absolutely void, and defendant says that all the pretended legal proceedings under which plaintiff claims were absolutely null and void, & especially that they are void as against this particular defendant, because defendant says that at the time of the institution of the suit and proceedings under which plaintiff claims there was no law authorizing such proceedings, and at the time the pretended decree and at the time the
29 pretended sale under which plaintiff claims were made there was no law authorizing such decree or sale, and that the

whole proceeding, including the decree and sale under which plaintiffs claims, were *coram non judice* and void, because the said Ashley circuit court had no jurisdiction of the subject-matter nor of the State of Arkansas, to whom said land then belonged, and because the State could not be, nor could any officer representing her be, a defendant in any such suit, and because said suit under which plaintiff claims was not commenced until after the repeal of the statute under which said Ashley circuit court undertook to proceed, and without which it had no power to proceed, and because no valuation of the land was ever made by the assessor or by any other person, and the decree under which plaintiff claims did not ascertain or fix the amount of taxes by any method or standard of valuation, but fixed and decreed an equal and arbitrary amount
30 as due from and upon each acre of land, regardless of its value, to wit, fifteen cents per acre on all the lands embraced in the decree.

A. W. FILES.
W. S. McCAIN.

Filed Nov. 6, 1889.

RALPH L. GOODRICH, *Clerk.*

And on November 27, 1889, as follows:

JOSEPH B. FORAKER
v.
GEORGE F. DICK.

Comes the complainant, by Dan. W. Jones and W. T. Wooldridge, Esqrs., his solicitors, and files herein his replication.

Which replication is as follows:

The Replication of Joseph B. Foraker, the Complainant, to the Answer of George F. Dick, the Defendant.

31 This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifest insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

W. T. WOOLDRIDGE,
DAN. W. JONES,
For Compl't.

Filed Nov. 27, 1889.

RALPH L. GOODRICH, *Clerk.*

32 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas.

Be it remembered that at a circuit court of the United of States of America in and for the western division of the eastern district of Arkansas, begun and holden on Monday, the 27th day of October, anno Domini one thousand eight hundred and ninety, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable John A. Williams, district judge, presiding and holding said court, the following proceedings were had, to wit, on November 14, 1890:

JOSEPH B. FORAKER
v.
GEORGE F. DICK.

This cause being brought on to be heard upon pleadings and proof and Dan. W. Jones and W. T. Wooldridge, Esqs., having been heard on the part of the complainant and W. S. McCain and A. W. Files, Esqrs., on the part of the defendant, and due deliberation having been had, it is ordered, adjudged, and decreed that the deeds of conveyance executed and delivered to the defendant on
33 the 18th day of March, 1885, by Paul M. Cobbs as commissioner of State lands of the State of Arkansas, and afterwards recorded in the proper office in Ashley county, Arkansas, be given up and cancelled and held for naught so far as the- purport to convey the lands mentioned and described in the bill, to wit, the southeast quarter, the east half of the northwest quarter, the southeast quarter of the southwest quarter, and the east half of the northeast quarter of section six (6); the east half of the northwest quarter, the east half and the west half of the southwest quarter of section seven (7); the north half of the northwest quarter, the southwest quarter of the northwest quarter, the northwest quarter of the southwest quarter, the northeast quarter of the southeast quarter, the south half of the southwest quarter, the south half of the southeast quarter, and the north half of the southeast quarter of section eight (8); the northwest quarter, the northeast quarter, the southeast quarter, and the east half of
34 the southwest quarter of section seventeen (17); the west half of the northwest quarter, the northeast quarter of the northwest quarter, the north half of the northeast quarter, and the southeast quarter of the northeast quarter of section 18; the north half of the northeast quarter and the northeast quarter of the northwest quarter of section 20, all in township 17 south, in range 5 west, situate in Ashley county, Arkansas.

That the defendant and his heirs and assigns be perpetually restrained and enjoined from setting up or claiming title to said lands or any or any part or portion of them by reason of said deeds or either of them or of anything in them or either of them contained; that the title of complainant in said lands as against the defendant and all persons claiming or to claim by, through, or under him be forever quieted, and that complainant have and recover of and from

defendant all his costs in and about this cause expended, and
35 that he have execution therefor.

On the final hearing the following depositions and evidence were introduced:

For Plaintiff.

M. L. HAWKINS, a lawful witness, having been first duly sworn, deposes and says:

1st Int. Where did you reside in 1881, 1882, 1883, & 1884, and what was then and still is your profession?

Ans. I resided at Hamburg, Arks., and was — am still a lawyer by profession.

2. Please examine the papers exhibited to you. State what they are and, if relating to the suit of the State of Arkansas on the relation of W. A. Arnold *v.* certain lands in Ashley county upon which taxes were alleged to be due, please state when they were filed and in what court & who were the attorneys.

Ans. I have exhibited before me a paper purporting to be an answer of Wm. M. Thompson to a bill filed by the State of
36 Arkansas on the relation of W. H. Arnold, in the Ashley circuit court, to enforce the payment of taxes due and unpaid on certain lands, in which said respondent denied that there were any taxes due on said lands mentioned in said answer; in which said respondent recites that the State of Arkansas on the relation of Arnold had filed said complaint on the chancery side of the Ashley circuit court on the — day of ——, 1882, against the N. W. ¼ of sec. 19, T. 15 S., R. 4 W., and other lands, &c., &c.; said answer was filed on the 3d day of July, 1882, as appears from the endorsement of the clerk thereon; a also similar answer of John S. Barnes, filed 3d of August, 1882; also a similar answer of P. A. Tully, filed August 4th, 1882; also a similar answer of Burrel Walker, filed 2d August, 1882; also a similar answer of Joshua B. Cane, filed July 11th, 1882; also a similar answer of Rosanna Elton, filed July 21st, 1882; also a similar answer of Anna Curtis, filed 10th July,
37 1882; also a similar answer of Uriah McDonald, filed July 22d, 1882; also a similar answer of T. A. Hay, filed July 27th, 1882, and others filed about this time. As attorney I filed the answers for the parties in the foregoing cases.

3d. If you state you were residing in Hamburg, Arkansas, in 1881 & 1882, state what your knowledge is in reference to a publication, alleged to have been made in the Ashley County Times, of the list of lands embraced in a suit by the State of Arkansas on the relation of W. A. Arnold *v.* certain lands upon which taxes were alleged to be due.

Ans. I was living here at the time and saw where the publications had been made; was a subscriber to the paper at that time, and these answers were no doubt made in response to the notice published in said paper.

4th. Please state what other papers are exhibited to you, what is

their character, and by what attorney prepared and where and when filed.

38 Ans. I am also shown nine papers purporting to be answers of various parties, drawn by A. W. Files, as attorney, setting up defenses to said complaint, and they appear to have been filed, from the endorsements thereon, at various times from the 15th of July, 1882, to the 5th of August, 1882, inclusive, in the office of the circuit clerk of Ashley county, Arkansas, in response to the bill of said State of Arkansas on relation of W. H. Arnold.

M. L. HAWKINS.

39 *Deposition for Defendant.*

Deposition of E. L. Thomson.

E. L. THOMSON, being duly sworn, deposes and says:

Q. State whether you were clerk of the circuit court within and for Ashley county during the years 1881 and up to and including the month of October, 1886.

A. I was.

Q. Please give the date of the commencement of the action of the State of Arkansas on the relation of W. H. Arnold against certain lands upon which taxes were alleged to be due and the issuance of the summons thereupon, directed to John Crawford, auditor of State.

Ans. The complaint was filed either in 1881 or 1882, and the summons was issued to auditor of State on June 7th, 1882.

Q. State whether notice was given in said suit and whether proof of publication was ever filed.

Ans. The notice was given, but I do not remember whether
40 proof of publication was ever filed or not.

Q. State whether William Prather, the then publisher of the only paper in Ashley county, did not inform you that he had not been paid for publishing the same, and that on that account he refused to make and file the proof of publication.

Ans. Prather did make complaint about his pay to me, and I told him I would assist him in getting it, and he then told me that he would never make the proof until he got his pay, and I have no knowledge of its ever being filed, and I told him he could force them to pay him before making the proof.

Q. Examine the complaint on file and state whether any value of said lands was put in said complaint. And has any value ever been so fixed and entered in said complaint?

A. I have examined the complaint and find that the lands in controversy in the complaint had no value affixed, nor has any value been affixed since.

41 —. Examine the list as it appears in the complaint and state when they purport to have been forfeited.

—. The lands in 6, 7, 8, and 17 appears to have been forfeited in 1865 and those in 20 in 1870.

Q. State whether any taxes were extended in said complaint against said lands at the time it was filed.

A. There was none, but the taxes as they now appear in said complaint were inserted by J. W. Van Gilder and G. W. Norman, masters in chancery appointed by the court for that purpose, in the year 1884.

Q. Examine the complaint and see if there is any difference in the amount of taxes charged against said lands forfeited in 1865 and 1870.

A. There is no difference.

—. State whether there was ever any decree *pro confesso* ever entered in this cause by you.

—. There was none.

Q. State how the taxes were estimated and extended in said complaint, taking the entire list in the complaint.

42 A. They were estimated and extended at fifteen cents per acre, regardless of location or value.

Q. State what taxes and how much appears and for what purposes they were applied against said lands.

A. There was 2 cents per acre levied for the State, four cents for the county, and nine cents for the costs.

E. L. THOMSON.

Cross-examined:

1st. Is it not true, in fact, that Wm. Prather, the publisher of the Ashley County Times, did publish a list of the lands embraced in the bill in his said paper at the time and in the manner required by law?

Answer. It is true that the list was published in the Ashley Co. Times, but I don't remember the date of the beginning of the publication.

2nd. Is it not true that said publisher did print, publish, and circulate and deliver to subscribers his paper, the said Ashley

43 County Times, shortly after said bill of complaint was filed in your office?

Ans. The list was published, but cannot say when.

3rd. Is it not true that the said publisher had an arrangement to publish said list with the said W. H. Arnold, and, in pursuance of said arrangement, was not said publication so made?

Ans. I don't know what arrangements he made.

4. If you state that Wm. Prather, the said publisher, made complaint about his pay, was it not after the said publication was made and because the said Arnold or his agents did not pay according to promise?

Ans. It was after the publication that he complained to me about his not being paid.

5th. Is it not true that the said Wm. Prather or his representative has received pay for said publication?

Ans. I do not know.

6th. Is it not true that the commissioner at said sales used

44 said printed list made by said Prather at the time of crying the sale at public auction?

Ans. That is my recollection.

7th. Do you know of your own knowledge and do you state positively that said Wm. Prather did not make proof of his said publication at the time and in the manner required by law?

Ans. I do not know that he did not, and I do not so state.

E. L. THOMSON.

45 Which exhibit is as follows:

In the Ashley County Circuit Court. In Chancery. May 5, 1884.

The Hon. John M. Bradley, judge of the 10th judicial circuit of the State of Arkansas, presiding.

Complaint.

In the Circuit Court of Ashley County, Arkansas, on the Chancery Side Thereof.

STATE OF ARKANSAS on Relation of W. H. ARNOLD
against
THE NORTHWEST OF THE NORTHWEST QUARTER OF SECTION Nineteen, in Township 15 South, in Range Four (4) West, and Other Lands upon Which Taxes are Due and Unpaid.

To the Honorable T. F. Sorrells, judge of the 10th judicial district of the State of Arkansas:

1st.

Humbly complaining, your orator showeth unto your
46 honor that the General Assembly of the State of Arkansas passed an act entitled an act to enforce the payment of overdue taxes, approved March 12, 1881, and that afterwards the said General Assembly passed an act amendatory thereto, entitled An act to amend section one of an act entitled An act to enforce the payment of overdue taxes, approved March 12, 1881, which last-cited act was approved March 22, 1881.

2nd.

Complainant further states and shows unto your honor that section one of the act of March 12, 1881, as amended by act of March 22, 1881, hereinbefore cited, provides that hereafter any citizen of this State who shall give security for costs may file a complaint in equity in the name of the State in the court having equity jurisdiction in the county in which the lands lie, setting forth that taxes are due on lands to be therein described, or that for any reason lands lying in the county have not been assessed for any one
47 or more years, and praying that a lien may be fixed on such lands by a decree of the court for such unpaid taxes, and that the lands may be sold for the payment thereof; and complainant alleges that he is a citizen of the State of Arkansas, and that he has given security for the costs that may accrue in this action, as provided by said act, and this suit is filed and brought on the equity side of this court against the lands mentioned and set forth in this complaint and which are situated in this, Ashley, county, in pursuance of the provision of said section one of said act as amended.

3rd.

Complainant further states that each and every of the said tracts and parcels of land hereinafter described were each and every of them subject to State, common-school, county, and — taxes for the years ——, hereinafter named; that each and every of them were assessed for the State taxes for the State of Arkansas, the com-
48 mon-school taxes for the State of Arkansas, the — county of Ashley, in which said tracts are and were situated, as provided by law, for the years hereinafter mentioned; that the said taxes were extended against the said tracts and parcels of land as provided by law; that the tax books for said years containing the said tracts and parcels of land, with said above-mentioned taxes duly and legally extended thereon as aforesaid, were by the clerk of said county delivered to the collector of said county, with the warrant, in due form of law, running in the name of the State of Arkansas, thereto attached, commanding the said collector to collect the said taxes as extended against said lands.

And complainant further states that in addition to the taxes levied, assessed, and extended against said lands, as above set forth, there were other taxes pretended to be levied and assessed against said lands and which were extended against the same which were unauthorized by law.

That in pursuance of the command contained in the warrant
49 for the collection of said taxes, delivered as aforesaid to the said collector, the said collector did demand the said taxes as extended against the said tracts and parcels of land as aforesaid, including the illegal and unauthorized levies and assessments as aforesaid, so extended as aforesaid, of the owners thereof, and that the said taxes were not paid.

And the complainant further shows unto your honor that the State taxes for the State of Arkansas, the common-school taxes for the State of Arkansas, the county taxes for the county of Ashley, which were legally authorized and assessed against the said lands, together with the penalty thereon, are now due and unpaid on the following-described tracts and parcels of land in said county in kind and amount as extended and for the years following, to wit:

4.

The complainant further showeth unto your honor that the
50 aforesaid tracts and parcels of land have been forfeited and sold to the State of Arkansas for the non-payment of the taxes and penalty for the years for which they were respectively returned delinquent, as shown herein.

5.

That the said sales and forfeitures are void, because of the erroneous and illegal levies and assessments of said illegal and unauthorized taxes so extended as aforesaid, and because of the many irregularities, illegalities, and informalities connected with the advertising and selling of said tracts and parcels of land, and be-

cause of the non-observance of the law in such cases made and provided; that there is now due and unpaid on each and every of said tracts and parcels of land the taxes and penalty, in kind and amount as above mentioned, for State, county, and common-school purposes as aforesaid, and that all of said lands are situated in the said county of Ashley as aforesaid.

51 6.

Complainant further showeth unto your honor that by said sales and forfeitures as aforesaid the State of Arkansas has no valid title to any of the said tracts and parcels of land hereinbefore mentioned, and for the reasons herein stated, but that notwithstanding this fact the Hon. D. W. Lear, who is commissioner of State lands for the State of Arkansas, is, by deeds of donation and sale, conveying said tracts and parcels of land, as such commissioner and in the name of the State of Arkansas, to such persons as apply to donote and purchase same; that such persons procure no valid title thereto by reason of such deeds, and such action of said commissioner is only calculated to bring about much litigation, contention, and strife among the citizens of the State on account of the invalid titles so procured as aforesaid.

52 (Here the lower part of the complaint having become worn out and destroyed, it is impossible to furnish a copy of the same or the signature to the same.) The complaint was regularly filed, but it is also worn too much to be copied.—clerk.

List of lands referred to, to wit:

Name.	Part of section.	Sec.	T.	R.	Acres.	Year forfeited.	State.	County.	T. T. P., &c.
Withers, Ayres, Matthews, & Miller	S. E. ¼	6	7	5	160	1865	3 20	6 40	24 00
"	E. N. E.	"	"	"	80	"	1 60	3 20	12 00
"	S. E. S. W.	"	"	"	40	"	80	1 60	6 00
"	E. ½	7	"	"	320	"	6 40	12 80	48 00
"	E. ½ N. W.	"	"	"	80	"	1 60	3 20	12 00
Unknown	W. ½ S. W.	"	"	"	80	"	1 60	3 20	12 00
Withers, Ayres, Matthews, & Miller	N. ½ N. W.	8	"	"	80	"	1 60	3 20	12 00
"	S. W. N. W.	"	"	"	40	"	80	1 60	6 00
"	N. W. S. W.	"	"	"	40	"	80	1 60	6 00
"	S. ½ S. W.	"	"	"	80	"	1 60	3 20	12 00
Mary Mullin	E. ½	17	"	"	320	1870	6 40	12 80	48 00
Withers, Ayres, Matthews, & Miller	N. W. ¼	"	"	"	160	1865	3 20	6 40	24 00
Mary Mullin	E. ½ S. W.	"	"	"	80	1870	1 60	3 20	12 00
Unknown	W. ½ N. W. ¼	18	"	"	80	1868	1 60	3 20	12 00
Mary Mullin	N. E. N. W.	"	"	"	40	1876	80	1 60	6 00
Unknown	N. ½ N. E.	"	"	"	80	1868	1 60	3 20	12 00
Mary Mullin		"	"	"	40	1876	80	1 60	6 00
Mary Mullin	N. E. N. W.	20	"	"	40	1870	80	1 60	6 00
"	N. ½ N. E.	"	"	"	80	"	1 60	3 20	12 00

53 No order appointing G. W. Norman and J. W. Van Gilder masters in chancery found on record, and below will be found the docket entry of the same made on the judge's docket, to wit:

Made 9th day of February, 1884, to wit:

George W. Norman and J. W. Van Gilder appointed masters in chancery to extend the taxes on said land before the next term of the court.

Report of Masters in Chancery.

JUNE 2, 1884.

To the honorable circuit court of Ashley county:

The undersigned, masters in chancery, appointed to extend the taxes in the case now pending in said court on the relation of W. H. Arnold *vs.* certain lands upon which it is alleged taxes are due, beg leave to report that they have discharged said duty as follows, by consent of parties representing the State, the county, and the
54 attorneys who brought the suit against said lands:

The taxes, penalties, and costs were fixed at 15 cents per acre. Of this amount four cents is to be paid to the county, two cents to the State, and the balance appropriated to expenses as follows: The attorneys, 3,200 dollars; to clerk, 2,500 dollars; to printer, 1,250 dollars; to com'r, 1,000 —; to masters in chancery, 1,000 —, and the excess that may be realized above these amounts be further distributed to the State and county in proportion of two to one in favor of the county.

In making the extension aforesaid we were of the opinion that the said six cents per acre about covered the average of taxes due on said lands, as the alleged forfeitures occurred at different periods of time.

We further report that we are fully satisfied that a sale of the lands embraced in this report thus return- to the tax books, the settling of disputed titles, &c., will enure to the benefit of the entire community; and we further report that we find certain lands marked on the bill were claimed by parties who have made
55 to us satisfactory showing that the said lands were improperly thereon, and that said parties claimed that the taxes thereon had been paid, and that the title of the State to certain other lands was good.

In each of said cases we have dismissed said lands and we desire the record in this case should show said fact of dismissal.

JOHN W. VAN GILDER.
GEO. W. NORMAN.

Filed June 2, 1884.

E. L. THOMSON, *Cl'k*,
By JACKSON, *D. C.*

Ashley Circuit Court. In Chancery. June 2nd, 1884.

John M. Bradley, judge.

STATE OF ARKANSAS on Relation of W. H. ARNOLD
against
CERTAIN LANDS.

56 STATE OF ARKANSAS on Relation of W. H. ARNOLD, Plaintiff,
vs.
CERTAIN LANDS ON WHICH TAXES ARE ALLEGED TO BE DUE, Defendant.

It appearing that the order herein made requiring the owners of the lands in this suit to appear and show cause, if any they could, why a lien should not be declared on certain lands named in the complaint herein, has been duly published in the manner required by statute, and that no answer has been put in as to the following tracts or parcels of land—that is to say:

	Sec.	Typ.	R.	Acres.	State tax.	Co. tax.	Total tax P. & costs.
S. E.	6	17	5	160	3 20	6 40	24 00
E. ½ N. E.	"	"	"	80	1 60	3 20	12 00
S. E. S. W.	"	"	"	40	80	1 60	6 00
E. ½	7	"	"	320	6 40	12 80	48 00
E. ½ N. W.	"	"	"	80	1 60	3 20	12 00
W. ½ S. W.	"	"	"	80	1 60	3 20	12 00
N. ½ N. W.	8	"	"	80	1 60	3 20	12 00
S. W. N. W.	8	17	5 W.	40	80	1 60	6 00
N. W. S. W.	"	"	"	40	80	1 60	6 00
S. ½ S. W.	"	"	"	80	1 60	3 20	12 00
E. ½	17	"	"	320	6 40	12 80	48 00
N. W.	17	"	"	160	3 20	6 40	24 00
E. ½ S. W.	"	"	"	80	1 60	3 20	12 00
W. ½ N. W.	18	"	"	80	1 60	3 20	12 00
N. E. N. W.	"	"	"	40	80	1 60	6 00
57 N. ½ N. E.	18	17	5 W.	80	1 60	3 20	12 00
S. E. N. E.	"	"	"	40	80	1 60	6 00
N. ½ N. E.	20	"	"	80	1 60	3 20	12 00
N. E. N. W.	"	"	"	40	80	1 60	6 00

And it further appearing that the creditor of the State, the relator, the prosecuting attorney of the 10th judicial district, and the judge of the county of Ashley *to* have appeared and consented that a decree should go against the above-described lands for the taxes, penalty, and costs assessed against them as fixed by the masters' report filed herein, it is therefore ordered, adjudged, and decreed that the amount of taxes, penalty, and costs above set forth are due on said lands, and that a lien for said taxes, penalty, and costs on said lands be fixed by this decree; and it is further ordered that if said sum of money so adjudged against said lands shall not be paid within 20

days from the 3rd day of June, 1884, the said lands shall be sold by a commissioner to be appointed by the chancellor, on
58 the notice and at the place prescribed by law; and it is further ordered that Thos. S. Stilwell be, and he is hereby, appointed as special commissioner of this court, and that, having made the publication required by law, *that* said commissioner proceed to expose the said lands for sale on Monday, the 21st day of July, 1884, at the court-house door, in the town of Hamburg, and that said sale continue from day to day till all of said lands be sold: Provided, that said lands are not to be sold for an amount less than the taxes, penalty, and costs herein assessed against each of said tracts of said lands, and that he report his action herein to the next term of this court. It is further ordered that upon sale aforesaid that said commissioner pay the fees and costs as follows, viz:

To the attorneys, thirty-two hundred and fifty (3,250); dollars to the clerk, twenty-five hundred (2,500) dollars; to the printer
59 twelve hundred & fifty (1,250) dollars; to commissioner, one thousand (1,000) dollars, and to the masters, one thousand (1,000) dollars; and if enough of said — are not sold to pay the above sums, that the commissioner pay *pro rata.*

Order Postponing Sale until 15th Sept., 1884.

In chambers, at Warren, Ark. (This should have been Lake Village.)

To the clerk of the circuit court of the county of Ashley and State of Arkansas:

In the Matter of the State of Arkansas on the Relation of Ashley County Against Certain Lands on which Taxes are Alleged to be Due and Unpaid.

You are directed and commanded to issue an order to the Hon. Thos. S. Stilwell, the commissioner named and set out in the decree in said cause, notifying him that the sale advertized by him under said decree for July 21, 1884, is under the provisions of the
60 act under which said decree was rendered directed and ordered to be continued and postponed until the 15th day of September, 1884, and that he shall on the said 21 day of July, 1884, at said sale proclaim and notify all persons there that said sale is so continued and postponed, and that he shall on said 15th day of September, 1884, proceed to sell said lands under said decree in the same manner as if made on the said 21st day of July, and if said commissioner deem re-advertising *if* necessary he may do so, only making profer to the No. of section in the 2 No. of the Hamburg News.

Given under my hand, as judge of the tenth judicial circuit of the State of Arkansas, the 18th day of July, 1884.

JOHN M. BRADLEY,
Judge of the Tenth Circuit of Arkansas.

Filed July 21, 1886, at 6 o'clock p. m.

E. L. THOMSON, *Clerk*,
By JACKSON, *D. C.*

61 (*Modified Decree at Monticello.*)

In Chambers, 10 Judicial Circuit of Arkansas. In Chancery.
August 21, 1884.

STATE OF ARKANSAS on Relation of W. H. ARNOLD
against
CERTAIN LANDS.

The matter of a modification of the decree entered in — heretofore in the above cause being presented to the chancellor in vacation of said court, and at chambers, by consent of all parties interested, and the plaintiff being represented by Met. L. Jones, *their* attorney, and the defendant by A. W. Files, auditor of State and attorney-at-law and *their* attorney, C. D. Wood, pros. att'y, the following proceedings were duly had: On motion of the plaintiff the decree was so modified by order of the c-ancel-or and by con-
62 sent of all parties concerned that in the distribution of the proceeds of the sale of the lands as ordered in the original herein the same should be appropriated as follows:

1. One thousand dollars to the clerk of the court aforesaid for his services.

2. Two thousand dollars to the State of Arkansas for assessed and fixed revenue on said lands.

3. Two thousand dollars for the county of Ashley for her revenue, determined by said decree.

4. Five hundred dollars for the school fund of said county, to be apportioned *pro rata* to the school districts of said county.

5. One thousand dollars to the masters, George W. Norman and J. W. Van Gilder.

6. To the commissioner, four hundred dollars, and he may retain from the State, county, and school districts the statutory 5 per cent. collection fee in addition to the allowance aforesaid, as collector, and eight hundred dollars to the printer.

63 7. Balance arising from said sale shall be paid to Met. L. Jones and M. L. Hawkins for the attorneys' fee in said action.

The payments provided aforesaid shall be distributed as above ordered to the beneficiaries under said order on the conclusion of said sale and without awaiting confirmation thereof.

It appearing that a failure of sale of certain lands mentioned in a supplemental bill to the original bill herein has occurred by mistake, it is ordered, now for then, that the commissioner mentioned in the decree proceed immediately to advertize said lands for sale, selling only those which have not been redeemed, retaining to the original owner- the right of production of their receipts, as in the original decree, and -at the supplemental sale herein provided for shall occur and be made to take place September 15, 1884, under ordinary regulations for judicial sales.

Given under my hands, at chambers, this the day and date last above written.

JOHN M. BRADLEY.

64 The clerk is ordered to enroll this order.

JOHN M. BRADLEY, *Judge.*

Filed August 23, 1884.

E. L. THOMSON, *Cl'rk,*
By JACKSON, *D. C.*

(*Order Extending Sale to* 15 *January*, 1885.)

THE STATE OF ARKANSAS on Relation of W. H. ARNOLD
vs.
CERTAIN LANDS IN ASHLEY COUNTY UPON WHICH TAXES ARE DUE.

AT CHAMBERS, &C.

It appearing to the undersigned, upon the suggestion of said complainant, that it would be difficult or impossible to sell all of said lands unless there is a further postponement of the sale ordered herein till the 15th day of January, 1885, and it appearing to — manifestly to the interest of the said State of Arkansas that all of said lands be disposed of to individuals, and for the purpose
65 of securing said sale, it is therefore ordered that said sale of said lands heretofore directed to be made in said cause, to be made on the 15th day of September, 1884, be, and the same is hereby, adjourned till the 15th day of January, 1885, and that upon the receipt of this order that the commissioner appointed herein make proclamation of said adjournment, and from and after said proclamation said sale shall stand so adjourned.

And it is further ordered that on said 15th day of January, 1885, the said commissioner proceed to offer and sell said lands as heretofore directed and required by the order and decree of the chancery court of said Ashley county.

It is further ordered that this order be spread upon the records of said court.

Given under my hand, as judge of the circuit court of Ashley county, this August 23 day, 1884.

JOHN M. BRADLEY, *Judge.*

Filed Sept. 24, 1884.

E. L. THOMSON, *Clerk,*
By JACKSON, *D. C.*

66 Ashley Circuit Court. In Chancery.

W. H. ARNOLD
v.
THE N. W. QR. OF N. W. QR. SEC. 19, T. 15, R. 4 W., and Other Lands.

Comes A. W. Files, as auditor of State, and excepts to a confirmation of the report of T. S. Stilwell, commissioner of this court herein

and moves the court to reject said report and to set aside the sale of the lands herein by said commissioner, and for causes states:

1. That the decree rendered herein on the 2 Monday in June, 1884, was irregularly, illegal-, and improperly made and entered.

2. That the amount of taxes alleged to be due on the said several tracts of land is not correct, nor is the same properly set out against said lands.

3. That no distribution of the taxes alleged to be due —, showing how much is due the State on account of general revenue,
67 insane asylum, sinking fund, and school funds, and how much is due as county tax, and how much is due to special school taxes in the different school districts.

4. That the masters in chancery in this cause, in their report, failed to determine and set out, in kind or otherwise, the amount of taxes due on said several tracts of land.

5. That said masters in chancery failed to ascertain and set out the penalties and costs lawfully due on each of said tracts.

6. That said masters in chancery have charged penalties, costs, and taxes due on said tracts in their smallest subdivisions and not as originally forfeited.

7. That the costs, as set out by said masters in chancery, are unreasonable and exorbitant.

8. That said commissioner did not sell said lands at the time, place, and in the manner designated by law, nor in accordance with the decree of the court herein.

68 9. That one J. C. Law, who was not a commissioner of this court, did, on the 21st day of July, 1884, in the absence of the commissioner from the county and after an order had been made by the court to postpone the sale of said land, proceed to sell several thousand acres of said lands contrary to the said order and decree of the court.

10. That the remainder of said tracts of land were not sold at a time and in the manner required by law nor in accordance with any decree of the court; and,

11. That no legal notice of the sale of said lands was ever given.

Wherefore, for the foregoing and divers other good and sufficient reason-, said auditor of State prays the court to set aside all the sales herein made, to reject the report of said commissioner, and to render and enter a decree herein fixing the correct amount of taxes, penalties, and costs due upon said lands and fixing a day of sale therefor, in accordance with law and equity.

A. W. FILES,
Auditor of State.

69 Filed August 10, 1885.

E. L. THOMSON, *Clerk*,
By GUISI, *D. C.*

The motion to set aside the amended decree made at Monticello was filled by Lawson, as county judge, at the February term of the circuit court, 1885, of which there was no record entry ever made,

and the original motion cannot be found, and therefore a copy cannot be furnished.

Ashley Circuit Court. In Chancery. August 5th, 1885.

John M. Bradley, judge.

STATE OF ARKANSAS on Relation of W. H. ARNOLD *against* CERTAIN LANDS. } Motion to Set Aside Decree.

Now, on this day, came on this cause for consideration,
70 and come the respective parties, and on motion—

It is by the court considered, ordered, and decreed that this cause be set for a hearing at chambers at Warren, Bradley county, Arkansas, on Thursday, the 8th day of October, 1885.

It is further ordered that the commissioner, Thos. S. Stilwell, be, and he is hereby, directed to make out a full and perfect report of all his acts and doings in this cause as such commissioner to said court, at chambers, at 8 o'clock on the said 8th day of October, and that all parties interested take notice hereof.

It is further ordered that the clerk transmit all the papers to said chambers, together with a certified — of the original decree.

71 *Decree Rendered at Warren, Bradley County, Arkansas, October 8th*, 1885.

J. M. Bradley, judge.

STATE OF ARKANSAS on Relation of W. H. ARNOLD *against* —— AND CERTAIN OTHER LANDS IN ASHLEY COUNTY.

Order at chambers.

Be it remembered that on this the 8th day of October, 1885, before his honor John M. Bradley, judge of the 10th judicial circuit, in the State of Arkansas, sitting at chambers, in the court-house, in the county of Bradley, this cause came on to be further heard, pursuant to an order of this court rendered at the August term, 1885, of the Ashley circuit court, on application to set aside the modified decree rendered at chambers, at Monticello, on the — day of ——, 1884, in this case, and said modified decree having been by the court set aside by consent of all parties in interest who were
72 present, either in person or by attorneys: Wherefore plaintiff's attorney moved the court to proceed to make the allowance and apportionment of the taxes due the State of Arkansas, the county of Ashley, the different school districts of Ashley county, the fees due plaintiff's attorneys, the clerk of the court, the commissioner, the masters, and the printer. When, therefore, without further action in the case, the court ordered that the further hearing of said application be adjourned over to the town of Warren, county

of Bradley, to be there heard at chambers, on the 8th day of October, 1885; whereupon all parties in interest were by the court notified to be present on the said 8th day of October, 1885, for the final adjudication of this cause.

Now, on this 8th day of October, 1885, at chambers, in the courthouse, in the county of Bradley, this cause came on for final adjudication, when the plaintiff appeared by attorney-, P. H. Rice
73 and Met. L. Jones, and the defendants by A. W. Files, auditor of State, and C. D. Wood, prosecuting attorney of this judicial district; J. F. Robinson, attorney for the clerk; C. H. Carlton, attorney for the commissioner; W. S. Lawson, judge of the Ashley county court, in behalf of the county of Ashley, and Geo. W. Norman, attorney for the masters and printer.

It now appears to the court that there are — acres of land contained in the complaint, upon which taxes, penalty, and costs are due to the amount of fifteen cents per acre, or the sum total of — dollars.

And it further appears to the satisfaction of the court, from the report of the commissioner filed herein, that — acres of said land have been sold by him under the decree of this court, making a sum total in his hands from sales of said lands to date the sum of two thousand dollars.

When, therefore, the court proceeded to make the allow-
74 ances to the different parties entitled to costs herein, and to the State of Arkansas, the county of Ashley, and the different school districts of Ashley county the taxes, penalties, and costs due thereon respectively, and therefore doth order, adjudge, and decree that the following amounts be taxed up against each acre of said lands in the bill mentioned and not having been from any cause stricken off: The sum of $3 24 cents for the attorneys for plaintiff; to E. L. Thomson, clerk, the sum of $2 08 cents; to William Prather, the sum of 1.45, printer's fees; to George W. Norman, the sum of 97 cents, master's fees; to Thomas Stilwell, the sum of 193 cents, his fees as commissioner for all lands sold by him; said sum to be paid by said commissioner hereafter to the parties entitled thereto, on the first Monday of January, April, July, and October of each year, their *pro rata* portion of all money in the hands of the commissioner derived from the sale of any of said lands hereafter sold.

75 It is further ordered that the fee allowed plaintiff's attorneys shall be paid by the commissioner as follows:

Two-thirds of said allowance to P. H. Rice and one-third to Met. L. Jones, said attorneys being present and consenting thereto.

It is further ordered by the court that the fund due the State of Arkansas be paid to the collector of Ashley county as the amount due the State of Arkansas, and by him be disbursed according to law; and the fund due the county of Ashley and the amounts due the different school districts of Ashley county be paid to the collector of said county, and by him accounted for according to law.

The commissioner in this case is further directed to continue the sale of said lands not heretofore sold under the original decree in

this cause, and report his further acts in the premises to the next regular term of the Ashley circuit court.

It further appears that no exceptions have been filed to the commissioner's report herein; the same is in all things confirmed.

76 It is further ordered that Thomas Stilwell, the commissioner in this case, proceed at once to pay out to the different parties entitled to the same by this order the *pro rata* amounts of the money on hand due them under this order for lands already sold, taking receipts therefor.

Given under my hand, as judge of the Ashley circuit court, at chambers, in Warren, this the 8th day of October, 1885.

JOHN M. BRADLEY, *Judge.*

The clerk of Ashley circuit court is directed to file the within decree or order and enter the same on the chancery record of said court.

Given under my hand, as judge of the 10th judicial circuit, at chambers, this 8th day of October, 1885.

JOHN M. BRADLEY, *Judge.*

Filed October 27, 1885.

E. L. THOMSON, *Clerk,*
By NEWTON, *D. C.*

77 Ashley Circuit Court. In Chancery. February 13, 1886.

John M. Bradley, judge.

STATE OF ARKANSAS on Relation of W. H. ARNOLD
against
CERTAIN LANDS.

It is ordered by the court that the commissioner, Thomas S. Stilwell, of said lands resume the sale of the same, at the south door of the court-house, in Hamburg, on Saturday, the 20th day of February, 1886, and continued from day to day until he sells all of said lands, or of further order from this court.

Ashley Circuit Court. In Chancery. February Term, 1887.
February 18, 1887.

A. C. Jones, special judge.

78 STATE OF ARKANSAS on Relation of W. H. ARNOLD
vs.
CERTAIN LANDS.

Come said parties, by attorneys, and on motion the order made — October term, 1885, of the Bradley circuit court be so amended as to strike out all of that part of said order that relates to the presence of A. W. Files, W. S. Lawson, and C. D. Wood being present and consenting to the same. On further motion it is ordered Thomas S.

Stilwell, commissioner herein, on or before the 9th day of May, 1887, shall file with the clerk of this court his report, showing all his acts and doings herein as commissioner, and that he report the number of acres sold, a description thereof, to whom sold, and the price received, and, further, that he make his personal appearance before the judge of the Ashley circuit court on said 9th day of May, 1887, and bring with him all moneys arising from the aforesaid sales,
and then and there to abide whatever may be further
79 ordered in the premises touching his acts as such commissioner.

Ashley Circuit Court. In Chancery. February Term. May 14, 1888.

A. C. Jones, special judge.

STATE OF ARKANSAS on Relation of W. H. ARNOLD
v.
CERTAIN LANDS ON WHICH TAXES ARE ALLEGED TO BE DUE. } Commissioner's Report.

Now, on this day, comes on to be heard before the Hon. A. C. Jones, special judge presiding, the report of Thomas S. Stillwell, commissioner herein, together with the exceptions thereto, and after hearing the proof and argument herein the said exceptions of W. M. Carter are sustained and the commissioner directed to refund to said W. M. Carter $18.00, to be deducted from the fund now in his hands.

And upon further consideration the exceptions of J. C. Law
80 relating to S. W. of S. E., S. E. of S. W., and N. E. of S. E. of section 35, T. 16 S., R. 7 west, be continued, and that said commissioner retain the money arising from the sale thereof until said exceptions are determined. Whereupon the said original and amended reports of said commissioner, with the exceptions aforesaid, be, and the same are hereby, in all things approved and confirmed. It is further ordered and decreed that said Stilwell bring into court all the funds shown by his said reports to be in his hands, and is hereby directed, ordered, and required to distribute the same in accordance with a previous order of this court—that is to say, that he pay the clerk the sum of 2.08 cents for each acre sold, less $277.32, heretofore paid; to the attorneys, 3.24 cents per acre, less $432.00, heretofore paid; that the commissioner retain 1.93 cents per acre for each acre sold as costs due him, and that commissioner pay to the collector of
Ashley county 1.93 cents per acre for each acre sold for said
81 county and 2.90 cents for each acre sold as aforesaid for revenue due State and .49 cents for revenue due school funds of Ashley county, and that he pay to the masters in chancery .97 cents per acre for each acre sold, less $129.33, heretofore paid them, and that he pay printer 1.45 cents for each acre sold, less $193.32, heretofore paid thereon, and that he produce into court receipts for the said several sums aforesaid, and the court so adjusts the costs and apportion them as aforesaid that this distribution to include all sales here-

tofore made by commissioner and reported; and it further appearing by the report of the commissioner herein that he has not been able to make a complete report of all lands sold by him—

It is therefore ordered that he have until the 1st day *day* of the next August term of this court to complete said supplemental report.

And it is further ordered that all land not heretofore sold by said commissioner be exposed for public sale as heretofore ordered
82 and directed by the previous orders of this court touching the same, and that said commissioner report his actions therein on the first day of next term of this court.

It is further ordered that the report of the commissioner filed herein be spread at large upon the records of this court, and that the clerk of this court forward the commissioner of State lands at Little Rock a certified copy of said report and order herein.

And it is further ordered that all deeds made by said commissioner in pursuance of the report and confirmation aforesaid be and the same is in all things and respects approved.

And it is further ordered that Z. P. Stills, clerk of this court, receive from the allowance heretofore made to the clerk for costs, as above stated, all costs due him in reference to his duties and services in this case, and said commissioner is required to pay the same to him and take his receipt as a voucher, as in the matter of the
83 other costs and disbursements, deducting the same from the allowance herein made the clerk.

And at the same time comes Joseph B. Foraker, T. C. Phillips, H. R. Downey, Hedges & Altenberg, and Robert E. Stallings and presents in open court their deeds, which *is* by the court approved in all things.

Ashley Circuit Court. In Chancery. May 14, 1888.

A. C. Jones, special judge.

STATE OF ARKANSAS on Relation of W. H. ARNOLD
v.
CERTAIN LANDS, &c.
} Commissioner's Report.

Comes Thos. S. Stilwell and states unto the court that at a former term of this honorable court he was appointed commissioner in a certain cause pending in said court, wherein the State of Arkansas on the relation of W. H. Arnold was plaintiff and certain
84 lands on which taxes were alleged to be due were defendants, condemning them to be sold for non-payment of taxes, and in pursuance of a decree rendered therein I did, as commissioner aforesaid, having had said lands duly advertized, according to law and said decree, in the "Hamburg News," a newspaper published at Hamburg, in the county of Ashley, that I would, as such commissioner, on the 21st day of July, 1884, expose at public vendue, before the court-house door, in said town of Hamburg, between the hours of 10 a. m. and 4 p. m. of said day, sell the lands hereinafter

described; that in pursuance of said notice and in obedience to a subsequent order made in said cause by said court on 18th day of July, 1884, and the 23d day of September, 1884, and on the 8th day of October, 1885, at chambers, I did expose at public vendue, before the court-house door, in said town of Hamburg, on said 21st day of July and in accordance with the orders thereinafter made,
85 between the hours aforesaid, the lands hereinafter mentioned for the amount of taxes and costs decreed against said lands, and that the following-named persons were the purchasers of the following-described lands, having bid the sum of fifteen (15) cents per acre, this being the amount decreed against said lands, and no one offering to pay the taxes, penalties, and costs decreed against said lands for a less portion than the whole of said tracts, * * * making in all forty-four thousand two hundred eighty-four & $\frac{13}{100}$ (44,284.13) acres, and that the sum of fifteen cents per acre has been paid to me by the parties aforesaid. Said commissioner further reports that in obedience to an order render-d by the judge of the 10th judicial circuit, at chambers, at Warren, in Bradley county, on the 8th day of October, 1885, he then and there reported that he had the sum of two thousand dollars ($2,000) in his hands as said
86 commissioner, as the proceeds of the sale of lands herein described, and your said commissioner was ordered by the judge aforesaid to make a *pro rata* distribution of the said (2,000) two thousand dollars in accordance to the decree heretofore rendered in this cause, which your commissioner accordingly did, as will appear by his vouchers herewith filed:

Voucher No. 1. By amount paid E. L. Thomson, clerk's fees	297 32
Voucher No. 2. By amount paid Wm. Prather, printer's fees	193 32
Voucher No. 3. By amount paid Norman & Van Gilder, masters	129 33
Voucher No. 4. By amount paid att'ys, Met. L. Jones, P. H. Rice	432 00
Voucher No. 5. By amount paid T. S. Stilwell, com'r's fees	257 33
	$1,289 30

Your commissioner further reports that he has in his hands the *pro rata* distribution belonging to the State and county out of the $2,000 aforesaid, and that he has in his hands the sum of $4,642.61, subject to the order of this hon. court; all of which is by said commissioner respectfully submitted, and he prays that his actions herein as commissioner aforesaid be in all things confirmed.

THOS. S. STILWELL,
Commissioner.

Filed May 11th, 1887.
Duly recorded May 16, 1888.

Z. P. STILL, *Clerk*,
By LAYNE, *D. C.*

87 STATE OF ARKANSAS on Relation of W. H. ARNOLD
vs.
CERTAIN LANDS ON WHICH TAXES ARE ALLEGED TO BE DUE.

Comes Thos. S. Stilwell, as commissioner, heretofore appointed in this cause, and begs leave — this his amended report to his report filed in the court on 11th day of May, 1887, and prays that same be made a part of the original report, at the same time and place stated in his original report.

Joseph B. Foraker was the purchaser of the following lands, to wit:

S. E. ¼	sec.	6,	T.	17	S.,	R.	5	west						160	acres.
E. ½ N. E.	"	"	"	"	"	"	"	"						80	"
S. E. S. W.	"	"	"	"	"	"	"	"						40	"
E. ½	"	7,	"	17	"	"	5	"						320	"
E. ½ N. W.	"	"	"	"	"	"	"	"						80	"
W. ½ S. W.	"	"	"	"	"	"	"	"						80	"
N. ½ N. W.	"	8,	"	"	"	"	"	"						80	"
S. W. N. W.	"	"	"	"	"	"	"	"						40	"
N. W. S. W.	"	"	"	"	"	"	"	"						40	"
S. ½ S. W.	"	"	"	"	"	"	"	"						80	"
E. ½	"	17,	"	"	"	"	"	"						320	"
N. W. ¼	"	"	"	"	"	"	"	"						160	"
88 E. ½ S. W.	sec.	17,	T.	17	S.,	R.	5	west						80	acres.
N. ½ N. W.	"	18,	"	"	"	"	"	"						80	"
N. E. N. W.	"	18,	"	"	"	"	"	"						40	"
N. ½ N. E.	"	"	"	"	"	"	"	"						80	"
S. E. N. E.	"	"	"	"	"	"	"	"						40	"
N. ½ N. E.	"	20,	"	"	"	"	"	"						80	"
N. E. N. W.	"	"	"	"	"	"	"	"						40	"

* * * Making in all, in addition to the number of acres heretofore reported, five thousand and forty-five acres, and that said parties having paid to him the sum of fifteen cents per acre, this being the sum decreed against said lands for taxes, penalties, and costs, your commissioner would respectfully — that owing to the fact his house was destroyed by fire some weeks ago that a part of his records of sales of lands in this cause were burned up, which will delay your commissioner in completing his list of lands sold, and cannot at this time make a final report, and he respectfully asks until the next term of this court to make his final report of his actions had in this cause as such commissioner.

Your commissioner herein would further report that, in-
89 cluding the amount in his hands in his original report, he has for distribution, in accordance with said decree, the sum of five thousand three hundred and ninety-eight & $\frac{36}{100}$ dollars ($5,398.36), and he prays that his actions herein be confirmed; and he will ever pray, etc.

THOS. S. STILWELL,
Commissioner.

Filed May 14th, 1887.

Z. P. STILL, *Clerk*,
By LAYNE, *D. C.*

Examined and confirmed and ordered of record this May 14th, 1887.

A. C. JONES,
Special Judge.

Duly recorded May 16, 1887.

Z. P. STILL, *Clerk*,
By J. W. LAYNE, *D. C.*

STATE OF ARKANSAS, }
County of Ashley. }

I, Z. P. Still, clerk of the circuit court in and for the county and State aforesaid, do hereby certify that the foregoing pages of
90 manuscript contain true copy of the papers and orders of record in the case of State of Arkansas on relation of W. H. Arnold *vs.* Certain Lands *in* which taxes were alleged to be due, pending in the circuit court of said county, on the chancery side thereof, as appears from the records and papers now on file in my office.

In testimony whereof I have hereto set my hand as such clerk and affixed the seal of said court this 14th day of September, 1888.

Z. P. STILL, *Clerk.*

Endorsed: Filed September, 1890. Ralph L. Goodrich, clerk.

91 And on February 10, 1891, as follows:

JOSEPH B. FORAKER }
v.
GEORGE F. DICK. }

Comes the defendant in open court, by W. S. McCain, Esq., his solicitor, and files herein his affidavits and prayer for appeal of this cause to the Supreme Court of the United States; and the court, having considered said prayer, doth grant the same and allows said appeal accordingly.

Which prayer for appeal is as follows:

Comes the defendant and avers that the lands in controversy in this suit are and ever since the commencement of this suit have been of greater value than $5,000, as shown by affidavits hereto attached and herewith filed, and defendant therefore prays an appeal to the Supreme Court of the United States.

92 W. S. McCAIN, *For Def't.*

Affidavits.

George F. Dick, being sworn, on his oath says: The appeal prayed for in this cause is not taken for delay, but that justice may be done,

and that the lands involved in this controversy are worth the sum of six thousand dollars.

GEO. F. DICK.

Sworn to before me, the undersigned, on this 26th day of January, 1891.

[L. S.] R. MAXTON,
Clerk County Court.

Wm. B. Lawrence and H. C. Richardson, of Bloomington, McLean county, Illinois, being duly sworn, on their oaths do say: We were formerly owners of an undivided interest in the lands involved in above-named suit and believe them to be worth the sum of six thousand dollars.

WM. B. LAWRENCE.
H. C. RICHARDSON.

93 Subscribed and sworn to before me, a clerk of the county court in and for McLean county, in the State of Illinois, this 31st day of January, A. D. 1891.

Witness my hand and the seal of said court the day and year above written.

[L. S.] R. MAXTON,
Clerk County Court.

Personally appeared before me, a clerk of a court of record in and for the county of McLean and State of Illinois, F. M. Funk, T. A. Munson, J. W. Gray, of Bloomington, McLean county, in the State of Illinois, who, being first duly sworn, on their oaths do say: We are each of us owners of an undivided interest in the lands in controversy in the entitled cause, said defendant, George F. Dick, being trustee thereot, and that we believe said lands involved in said suit to be reasonably worth the sum of six thousand dollars, and that the appeal is not for delay, but that justice may be done.

F. M. FUNK.
J. W. GRAY.
J. W. FULMLER.
T. A. MUNSON.

94 STATE OF ILLINOIS, } *ss:*
McLean County, }

I, Robert Maxton, clerk of the county court in and for said county, in the State aforesaid, do hereby certify that the above affiants were by me first sworn and in my presence subscribed the foregoing affidavit.

Witness my hand and the seal of said court this 31st day of January, A. D. 1891.

[L. S.] R. MAXTON, *Clerk,*
By —— ——.

95 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas.

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the western division of the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the originals remaining of record in my office and constitute a true copy of the record and of the assignment of errors and of all proceedings in the case of Joseph B. Foraker *v.* George F. Dick.

The Seal of the Circuit Court U. S. A., Western Division of East. Dist. Ark.

In witness whereof I have hereunto set my hand and the seal of said court this fourteenth day of February, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States of America the one hundred and fifteenth.

Attest: RALPH L. GOODRICH, *Clerk.*

Transcript, $24.65.

Endorsed on cover: Case No. 14,488. E. Arkansas C. C. U. S. No. 652. George F. Dick, appellant, *vs.* Joseph B. Foraker. Filed February 21, 1891.

In the Supreme Court of the United [illegible]

GEO. F. DICK, *Appellant*,

v.

JOSEPH B. FORAKER, *Appellee*.

APPEAL FROM THE UNITED STATES CIRCUIT COURT FOR THE EASTERN DISTRICT OF ARKANSAS—WESTERN DIVISION.

BRIEF FOR APPELLANT.

In the Supreme Court of the United States.

GEO. F. DICK, *Appellant.*

v.

JOSEPH B. FORAKER, *Appellee.*

APPEAL FROM THE UNITED STATES CIRCUIT COURT FOR THE EASTERN DISTRICT OF ARKANSAS—WESTERN DIVISION.

BRIEF FOR APPELLANT.

This was a bill *quia timet* filed in the court below by appellee against appellant to quiet the title to certain lands lying in Arkansas.

The complainant (appellee) is a citizen of Ohio. The defendant is a citizen, resident and inhabitant of Indiana. This appears on the face of the bill. The defendant was served with process in Indiana.

The defendant filed a demurrer to the jurisdiction of the court, and this being lost from the file, he renewed the point by motion to dismiss. The court overruled the motion.

The first contention of appellant is, that the court below did not have jurisdiction. Can a suit be maintained in a

Federal Court in Arkansas by a citizen of Ohio against a sole defendant who is a citizen of Indiana, when the latter resides and is served with process in Indiana? We think not. It may be conceded that this suit, being of a local nature, could not have been brought in Indiana or Ohio.

N. I. R. R. v. M. C. R. R., 15 How., 242.

It is the established doctrine of this court that no suit can be maintained in the Federal Court anywhere unless the jurisdiction is expressly conferred.

Sheldon v. Hill, 8 How,, 441, and cases therein cited.

The Congressional statute of 1888, provides that every suit in the Circuit Court of the United States must be brought in the district in which the defendant resides, except "where the jurisdiction is founded only on the fact that the action is between citizens of different states," in which case the suit may be brought either in the district where the defendant or the plaintiff resides. It is clear enough that this action can not be upheld by this statute. But the contention of the appellee is, and the court below held, that this suit can be maintained under section eight (8) of the act of March 3, 1875, which section Congress in the act of 1888, expressly declined to repeal. This section provides that in certain suits in equity touching the title to land, including bills to remove clouds from title, where "one or more of the defendants" are out of the district "such absent defendant or defendants" may be served wherever found. The appellant was the sole defendant in the case at bar.

Appellee contends that this section applies to a sole defendant who resides out of the district and that service on such defendant, wherever found, is good. We insist that this statute can never apply unless there be two or more defendants of whom, at least one, is found in the district where the suit is brought. It may be conceded that under the Revised Statutes (sec. ~~737~~ 738) the law was, as appellee contends.

It is now, under that section (~~737~~ 738), "when any defendant" was not found in the district in suits of this kind he might be served out of the district. That section however is repealed by section 8 of the Act of 1875, by implication.

In interpreting these statutes much light is obtained by comparing the language of section ~~736~~ 737 with that of section ~~737~~ 738 of the revised statutes. By reading section ~~736~~ 737, it is seen to be clear enough that the phrase, "one or more defendants" means one or more of several defendants, and that that section (~~736~~ 737), could never apply to the case of a sole defendant.

Section ~~737~~ 738 is equally as applicable to the case of a sole defendant as to that of several defendants. Now, when Congress, in 1875, undertook to re-cast the jurisdiction of the courts, section ~~737~~ 738 of the revised statutes was remodeled into section 8, of the Act of 1875, and in formulating the jurisdiction in this class of equity cases, the Congress wittingly adopted the phrase, "one or more of the defendants," as found in section ~~736~~ 737, and intentionally discarded the phrase, "any defendant," as formerly used in section ~~737~~ 738. Inasmuch, therefore, as the phrase, "one or more of the defendants," as used in section ~~736~~ 737, always meant one or

more of several defendants, and could never, in any case, apply to a sole defendant, we are shut up to the conclusion that section 8, of the Act of 1875, also meant to restrict the jurisdiction to cases in which there were several defendants. If this is not so, why this change in the language of the statute? If Congress had intended to continue the jurisdiction as found in section 737, why did they not continue the use of the phrase, "any defendant." This language, "any defendant," would have fitted the case at bar, and would have included every case of this nature where one, or any, or all of the defendants were absent from the district. Even if this section, 8, had been the first statute on the subject, we would not readily accept the idea that it meant what appellant contends, and what the court below held it to mean. Many statutes are hurriedly prepared on new subjects, and by men not specially skilled in the use of language. In such cases, the courts adopt a liberal construction to give effect to the evident intention of the law makers, but it is well known that statutes fixing the jurisdiction of the Federal Courts are carefully prepared by men who have the highest degree of skill in the accurate use of language, and who have many precedents to follow, and we would be exceedingly reluctant to believe that if Congress meant that suits in equity effecting the title to land should be brought in the district where the land lies, regardless of the residence of any of the parties, it would not have been expressed in clear and simple terms. To say that such a suit may be maintained, although "one or more of the defendants" cannot be found in the district, is a very different thing from saying that such

suit may be maintained if any or all of the defendants are absent from the district. When we consider, however, that the men who drafted section 8, of the Act of 1875, had their choice between the language of section 736 and section 737 of the revised statutes, and they adopted the phrase, "one or more of the defendants," from section 736, it is quite absurd to say that they meant "any defendant," when they had this phrase before them in section 737, accurately expressing the meaning contended for, and yet declined to adopt it.

So far as we have been able to find, the particular phrase under consideration has not been construed or applied by any of the courts. The spirit of the present law, however, is that a defendant must be sued in his own district, except in two instances. In one of these, he may be sued in plaintiff's district, and in the other, if there are several defendants, and it is a suit in equity concerning land, and any of the defendants are found in the district, then one or more of the defendants may be served wherever found. The case at bar does not fall within either one of these two exceptions.

The court below having refused to dismiss the cause for want of jurisdiction, the defendant answered. The title sought to be quieted by the bill is a title acquired by the complainant at a judicial sale made by the Circuit Court of Ashley county, Arkansas, in equity, under what is known in Arkansas as the "over due tax law." The answer sets up a

want of jurisdiction on the part of the Ashley Circuit Court in that proceeding.

In the next place, we contend that the over due tax law of Arkansas is in conflict with the Constitution of the United States, and that the Ashley Court could aquire no jurisdiction in proceedings under that statute.

For a great many years in Arkansas, taxes on land have been assessed purely *in rem*. This method has been practicable from the fact that all the land in the State was surveyed out under the national system of surveys, and is, therefore, readily described. Delinquent taxes had always been collected by ministerial officers who coerced payment by sale of the delinquent land. But in the year 1881, the legislature sought to avail itself of the judicial power in collecting delinquent taxes. By an Act of that year (Acts of Ark. of 1881, p. 63), the legislature authorized any citizen to file a bill in equity to enforce the payment of taxes delinquent on real estate.

This Act does not provide for personal service or for seizure of the land, but only for service by publication, the provisions of the Act on this subject being as follows:

"SECTION 2. On the filing of such complaint, the clerk of the court shall enter on the record an order, which may be in the following form:

State of Arkansas on relation of ————, plaintiff, v. certain lands on which taxes are alleged to be due, defendant.

Now, on this day came said plaintiff, and files here in court his complaint in which he sets forth that there are certain taxes due on the following lands:

[*Here insert description of the lands.*]

Now, therefore, all persons having any right or interest in said lands, or any of them, are required to appear in this court within forty days from this date, then and there to show cause, if any they can, why a lien shall not be declared on said lands for unpaid taxes, and why said lands shall not be sold for non-payment thereof.

SEC. 3. The clerk of said court shall at once cause a copy of said order to be published for two insertions in some newspaper published in the county, and if there is no newspaper published in the county, he shall cause a copy of said order to be posted at the door of the court house of the county, or of the room in which the court is held, and such publication shall be taken to be notice to all the world of the contents of the complaint filed as aforesaid, and of the proceedings had under it.

SEC. 5. At the end of the forty days mentioned in section 2 of this Act, the clerk shall enter upon the record a decree *pro confesso*, covering all lands named in the complaint, regarding which no answer has been filed, which order may be in the following form:

State of Arkansas on the relation of ————, plaintiff, v. certain lands on which taxes are alleged to be due, defendant.

It appearing that the order herein made, requiring the owners of the lands in this suit to appear and show cause, if any they could, why a lien should not be declared on certain lands named in the complaint herein, has been duly published in the manner required by statute, and that no answer has been put in as to the following tracts or parcels of land, that is to say:

[*Here describe the land.*]

It is now, therefore, ordered that the complaint be taken as true and confessed as to said lands above described."

The subsequent sections of the Act provide for a sale of the land by a commissioner in the usual manner in which sales in chancery are conducted. The bill in this case shows a sale made on a pretended decree rendered *pro confesso* under this Act. The Act does not provide for the issuance or service of personal process nor for the seizure of the land, and the record shows that there was no such service or seizure. Was this due process of law? Can such a proceeding be recognized in any court as a judicial proceeding at all?

Every judicial proceeding must necessarily be *in personam* or *in rem*. It will not be claimed that this is a suit *in personam*.

In all proceedings *in rem* there must be an actual seizure of the property before the court can proceed. This is jurisdictional. Nothing short of this is due process of law. Publication of notice in suits *in rem* is important, but it is not the essential thing. *The Act of 1881*, under which this

suit was brought, provides for publication only, without either seizure or personal service. The proceedings under review in *Hollingsworth v. Barbour, 4 Petes, 466*, were much the same as in the case at bar; that is, judgment was rendered on publication only, without seizure or actual service. It was held that the proceedings were void.

In *Heidritter v. Oil Cloth Co., 112 U. S., 294*, the court proceeded *in rem*, but without seizure of the land, which was at the time held adversely to the court. Held that no jurisdiction was acquired.

See also

Waples' Proceedings in rem, secs. 64, 65, 68, 611, and cases cited.

The court said, in *Cooper v. Reynolds, 10 Wall., 319:* "If there has been no publication of notice, a court of errors "might reverse the judgment. But when the writ has been "issued, *the property seized*, and that property condemned and "sold, we cannot hold that the court had no jurisdiction for "want of sufficient notice."

In *Pennoyer v. Neff, 95 U. S., 715*, the court say: "Service by publication may be sufficient where property is "once brought under the control of the court by seizure or "some equivalent act. The law assumes that property is "always in the possession of the owner or his agent, and it "proceeds upon the theory that its seizure will inform him. " * * * It has been held, without an exception, as far "as we are aware, that such judgments were without any bind-

"ing force except as to the property within the State, to "reach and effect which was the object of the action, and "which property was brought under the control of the court."

In the case in *112 U. S., 301, supra*, Judge Miller let fall the expression that the "mere bringing of a suit" conferred jurisdiction. This expression was a mere *dictum*. Literally, however, it is true, since a suit cannot be brought without either personal process or process of seizure.

This *dictum* seems to have misled Judge Smith in *McCarter v. Neil, 50 Ark., 191*, in which case the opinion was based upon the fallacy that a suit could be commenced by publication of a warning order.

"Due process of law" and the "law of the land" are constitutional phrases which have substantially the same meaning. They are found in all the old charters and constitutions. They mean that, whereas, among our English forefathers no judicial proceeding was allowed without notice to the party interested, either by personal service or by seizure of his property, no court shall hereafter proceed to judgment without this. In determining what is due process of law, the court must be governed by the constitution, not by what the legislature has enacted in violation of the constitution.

We readily admit that when the sovereign undertakes to collect her revenue through her executive and ministerial officers, she may proceed without any notice whatever. This has always been recognized as an established exception as

pointed out by this court in *Murray's Lessees v. Co., 18 How., 272.* But this revenue process is not judicial process. It has the advantage of being summary and effective, but it lacks the sanctity of a judicial proceeding. When the sovereign elects to abandon the summary method of proceeding through executive and ministerial officers, and when she submits to seek her remedy in the courts, she must conform to the judicial method of proceeding which there obtains.

No court can proceed without notice. Notice by publication was unknown to our ancestors who formulated the phrase, "due process of law." In one of the cases above cited, Judge Field truthfully says that, "in a majority of cases, notice by publication never reaches the parties for whom it is intended." Jurisdiction based upon a notice which, in a majority of cases does not notify the parties interested, is a delusion and a snare. It is unworthy of a civilized people, even if it were not positively prohibited by the constitution.

The Supreme Court of Arkansas have upheld this statute as they have a number of other statutes authorizing similar proceedings. All kinds of suits in Arkansas are now conducted against residents and non-residents without any notice, other than by publication. The economy and dispatch of this method of proceeding seems to have commended itself to the Arkansas legislature, and being upheld by the courts, the legislature has virtually discarded due process of law, especially in cases in which the State is plaintiff, and also in many cases in which individuals are

plaintiffs. It is not an exceptional occurrence in this State, but it is a matter of frequent occurrence that a citizen who is quietly occupying his home, and who has promptly discharged every obligation due by him as a citizen, is called upon to surrender his land and home by a writ of ouster under a judicial proceeding, of which he has never had any knowledge whatever. Such a case is actually reported in *50 Ark., 188.*

This method of proceeding by publication has proven to be popular with legislators, because it is expeditious and inexpensive. A defendant who never hears of the suit that is brought against him causes the court very little trouble and the State very little expense. In affirming the validity of the over due tax law the Supreme Court of Arkansas cite and rely upon *Pennoyer v. Neff, 95 U. S., 714.* (See *51 Ark., 191*), but the case cited is a direct authority against the statute in question.

If this court should hold the Arkansas over due tax statute to be constitutional, we next insist that the Ashley Circuit Court failed to observe an essential requirement of that statute. A complete and certified transcript of the record of the Ashley Circuit Court, including the proceedings and judgment, was filed in the court below. From this transcript it affirmatively appears that in that proceeding the clerk never did enter upon the record an order as required in section two of the over due tax statute above copied. This order was an essential prerequisite to the publication in the newspaper. The entering of this order upon the record was

jurisdictional. Its absence was fatal to the over due tax proceedings. This precise question was before the Supreme Court of Arkansas in the recent case of *Gregory v. Bartlett, MSS.*, which will appear, no doubt, in the 55th Arkansas Report. The court there held the sale invalid on account of this omission of the clerk.

It is unnecessary to discuss the title of the defendant.

As this court said in *Nix v. Allen, 112 U. S., 129*, which, like this, was a suit to quiet title: "The appellant can recover only on the strength of his own title. If he has no title it is a matter of no importance how weak that of his adversary may be."

It is conceded that the Auditor of State was summoned to answer in the Ashley Circuit Court. The suit being brought to enforce taxes, was of course brought in behalf of the State. If the auditor appeared for the State, then we have the absurdity of a judicial proceeding prosecuted by the State against the State. But the Constitution of Arkansas, Art. 5, Sec. 20, provides: "The State shall never be made defendant in any of her courts." So the State could not be a defendant, and the appearance of the auditor as a plaintiff could lend nothing in the way of jurisdiction.

On all three of the propositions which we have argued we insist that there was error in granting the complainant relief.

W. F. Low

For Appellant.

155-404

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Supreme Court of the United States.

October Term, 1893.

GEORGE F. DICK, *Appellant*,

vs. } No. 386.

JOSEPH B. FORAKER, *Appellee.*

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

BRIEF FOR APPELLEE.

DAN W. JONES,
For Appellee.

TUNNAH & PITTARD, PRINTERS.

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BRIEF FOR APPELLEE.

This suit was brought by the appellee, a citizen of Ohio, against the appellant, a citizen of Illinois, to remove a cloud upon the title of certain lands in Ashley County, in the Eastern District of Arkansas, under the provisions of Section 8, of the Act of March 3, 1875, being Section 738 of the Revised Statutes of the United States.

The first and principal question is that of jurisdiction.

This court in *Butterworth vs. Hill, 114 U. S., 128, 133*, said: "The Act of Congress exempts a defendant from suit in any district of which he is not an inhabitant, or in which he is not found at the time of the service of the writ. It is an exemption which he may waive, but unless waived he need not answer, and will not be bound by anything which may be done against him in his absence. *What is here said of course does not apply to cases where the suit is brought and service is made under Sections 736, 737 and 738 of the Revised Statutes.*"

Appellant contends that there must be more than one defendant to a suit brought under Section 738, and that at least one of the defendants must be an inhabitant of the district in which the suit is brought in order to give the court jurisdiction. We do not so understand the decisions of this court in the cases wherein this statute is construed, nor do we so interpret the intention of the statute. In *Mellen vs. Moline Malleable Iron Works, 131 U. S., 352*, Mr. Justice Harlan, speaking for this court, said: "That section (Section 8, *supra*) authorizes an order to be made directing an absent defendant in any suit brought in a Circuit Court of the United States to enforce any legal or equitable lien upon or claim to, or to remove any incumbrance or lien or cloud upon the title to, real or personal property *within the district where such suit is brought*—such

defendant not being an inhabitant of or found therein, and not voluntarily appearing in the suit—to appear, plead, answer or demur, by a designated day. * * * If the defendant does not appear, plead, answer or demur within the time limited, or within such further time as may be allowed, the court—proof being made of service or publication of the order and of the performance of the directions therein contained—may 'entertain jurisdiction and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said district.' 'But,' the Act declares, 'said adjudication shall, as regards said absent defendant or defendants without appearance, *affect only the property which shall have been the subject of the suit and under the jurisdiction of the court therein, within such district.*'"

In *Arndt vs. Griggs, 134 U. S., 316*, Mr. Justice Brewer, delivering the opinion of this court, said: "In this connection, it is well to bear in mind that, by the statutes of the United States, in proceedings to enforce any legal or equitable lien, or to remove a cloud upon the title of real estate, non-resident holders of real estate may be brought in by publication (18 Stat., 472), and the validity of this statute, and the jurisdiction conferred by publication, has been sustained by this court. *Mellen vs. Moline M. Iron Works, 131 U. S., 352.*"

In neither of these cases has this court intimated

that the jurisdiction depended upon the presence of a defendant within the district where the property is situated. On the contrary, the *situs* of the property—the parties being citizens of different states—gives jurisdiction. It is a proceeding *in rem*, "in that larger and more general sense applied to actions between parties where the direct object is to reach and dispose of property owned by them, or of some interest therein," as explained by Mr. Justice Field in *Pennoyer vs. Neff*, *95 U. S.*, *714*, *734*, cited by Mr. Justice Brewer in *Arndt vs. Griggs*, *supra.*

There is certainly nothing in the Constitution of the United States to prohibit Congress from passing the act with the construction contended for by appellee. The controversy is "between citizens of different states." The land from the title to which a cloud is sought to be removed is within the district where the U. S. Circuit Court is held. A state court of chancery in Arkansas has jurisdiction to remove clouds from the title to real estate. *Shell vs. Martin*, *19 Ark.*, *139*; *Walker vs. Peay*, *22 Ib.*, *103*. The statutes of Arkansas provide for substituted service and service by publication upon non-residents of the state. *Mansfield's Digest of Arkansas' Statutes*, *Secs. 4987*, *4988*, *4989*, *4990*. No *personal* judgment can be rendered against a defendant summoned by publication, or by substituted service, who has not appeared in the action. *Ib.*, *Sec. 5200*.

These sections are as follows:

"Sec. 4987. Where a defendant is out of this state, the plaintiff may take a copy of the complaint, certified by the clerk, with a summons annexed thereto, warning such defendant to appear and answer the complaint within sixty days after the same shall have been served on him, and cause a copy thereof to be delivered to such defendant anywhere in the United States by some person to whom he is personally known. Proof of the delivery shall be made by the affidavit of the person making it, indorsed on or annexed to the certified copy and summons, in which the time and place of the delivery, and the fact that the defendant was personally known to the affiant shall be stated. The officer before whom the affidavit is made shall certify that the affiant is personally known to him to be worthy of credit.

"Sec. 4988. The certified copy and summons, with the affidavit and certificate, as provided in the last section, being returned and filed in the action, shall be deemed an actual service of the summons in due time for trial at the first term commencing not less than sixty days after such service.

"Sec. 4989. Where it appears by the affidavit of the plaintiff, filed in the clerk's office at or after the commencement of the action, that the defendant is:

* * * * * * * * * * *

"*Second.* A non-resident of this state.

* * * * * * * * * * *

* * * the clerk shall make upon the complaint

an order warning such defendant to appear in the action within thirty days from the time of making the order.

"Sec. 4990. The court may make the warning order upon the requisite facts being satisfactorily shown by affidavit or other proof. Warning orders shall be published weekly for at least four weeks.

"Sec. 5200. No personal judgment shall be rendered against a defendant constructively summoned, or summoned out of this state, as provided in Section 4987, and who has not appeared in the action."

Under these provisions of the laws of Arkansas—and similar statutes exist in all the states—the state courts have jurisdiction of an action like this, notwithstanding the non-residence of all the parties—the land itself giving jurisdiction, and non-residents having the same right to bring actions in the state courts as residents have. Was it not the intention of Congress, when enacting Section 8 of the Act of March 3, 1875, to give this same jurisdiction to the Circuit Courts of the United States? If not, what effect could that section have, and why specially retain it in the Act of March 3, 1887, as amended August 13, 1888?

In *Spencer vs. Kansas City Stock Yards Co., 56 Fed. Rep., 741*, this precise question came up—the suit not being brought in the district of the residence of either the plaintiffs or the defendant. Upon the motion to dismiss the action for want of jurisdiction on that ground, the court said:

"By the first section of the Act of 1875, it was provided—

"'That no civil suit shall be brought before either of said courts against any person by any original process or proceeding in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving such process or commencing such proceeding,' etc.

"The re-employment of the term 'found' in Section 8 is to be understood in the sense in which it was employed in Section 1. It contemplates a proceeding against a defendant in a district whereof he is not an inhabitant, and provides for the substituted service of process upon him to bring him into the forum of litigation for the purpose of binding the *res*, unless he is 'found' therein, in which case he may be served just as he could be under Section 1. The first section applied more especially to proceedings *in personam*, or at least where, in addition to the judgment *in rem*, a personal judgment over might be rendered against the defendant. The other (Section 8) applies solely to actions *in rem*, and in districts whereof the defendant is not a resident. While in the amendatory Act of 1887-'88 the words, 'in which he shall be found,' etc., are omitted from the first section, so that suits wherein jurisdiction depends upon diverse citizensip must be brought in the district wherein the defendant resides, or in which the plaintiff resides, the act continues in force Section 8 of the Act of 1875, and, of course, with

all it expressed or implied in the original act. And while the Act of 1887 was designed to restrict, rather than enlarge, the jurisdiction of the United States Circuit Courts, it leaves unimpaired the original scope of of Section 8, for by Section 5 of the amendatory Act of 1887 said section is declared to be unaffected.

"For what purpose was this section inserted? Some special office must be assigned it. It should receive that construction which will best effectuate and carry out the legislative intent. It first appeared in the Act of 1872 (17 Stat., 196-198). In that act it was limited in its application to suits in equity. It seems to me that an examination and understanding of the scope and object of the entire Act of 1872 will serve to indicate the purpose of Section 8. The act deals mainly with questions of practice, remedies, process and proceedure. Section 6, for example, provided that:

"'In common law causes in the Circuit and District Courts of the United States, the plaintiff shall be entitled to similar remedies, by attachment, or other process, against the property of the defendant, which are now provided by the laws of the state in which such court is held, applicable to the courts of such state,' etc.

"The preceding section (5) provided, 'That the practice, pleadings and forms and modes of proceeding in civil causes, other than equity and admiralty causes in the Circuit and District Courts, * * * shall conform, as near as may be, to the practice, pleading and

forms and modes of proceeding existing at the time in like causes in the courts of record of the state within which such Circuit or District Courts are held, any rule of court to the contrary notwithstanding.'

"Following up the same policy and purpose, Section 13, which has become Section 8, was inserted. What was that policy and purpose? Manifestly, it was to assimilate, as far as may be, the practice, proceedings and remedies, in the specified particulars, in the federal courts to those in the state courts. It was doubtless well known to the lawyers in Congress that in actions *in rem*, affecting in any manner title to real property, the assertion of claims legal or equitable to it, as also the enforcement of liens against it, the *situs* of the property drew to it the venue of litigation; and where the defendant in such actions had his residence or citizenship in a state different from that where the property is situated, or could not be found in the state, the state statutes provided for what is known as 'substituted service of process' on him to bring him into the forum of litigation. Unless it was the mind and purpose of the legislative body to give jurisdiction to the United States Courts to proceed in the forum where the real property is situated, although the defendant may reside elsewhere, it is difficult to perceive what was its object, or to give to Section 8 any practical office. It is wholly unnecessary where the defendant is a citizen of the same district where the *res* is located. The plaintiff being a non-resident of the state could

sue, in such instance, under the first section of the acts. This construction, in my humble judgment, involves no conflict with Section 1, which makes jurisdiction to depend on the diverse citizenship of all the plaintiffs from that of the defendant. Here all the plaintiffs are citizens of states other than that in which the defendant resides. But it does differ from the other requirement of Section 1 in respect of the suability of the defendant outside of the district of his residence. But there is no repugnant contradiction in the two provisions, when the object or legislative intent is kept in mind."

This reasoning of Judge Phillips is so cogent and to the point that we think it unanswerable and conclusive of the question, and, for that reason, we have set it forth so fully. To the same effect is the case of *John Single vs. The Scott Paper Mfg. Co.*, by Judge Ricks, in U. S. C. C. for Northern District of Ohio, reported in Weekly Law Bulletin and Ohio Law Journal, Vol. XXX, p. 3.

II.

Appellant's second contention is that the "Overdue Tax Law" of Arkansas of 1881, under which appellee derives his title to the lands in controversy, is in conflict with the Constitution of the United States.

Parts of the act are correctly set out in appellant's brief. The act was repealed in 1883, but the Supreme Court of Arkansas—the court of last resort in the state—has uniformly held it to be constitutional, and

that proceedings pending at the time of its repeal were not affected by the repeal.

State, ex rel., etc., vs. Certain Lands, 40 Ark., 35.

Files, Auditor, vs. Fuller, 44 Ib., 273.

The contention is that this act authorized the taking of property without "due process of law." It is a rule of construction that a statute must be interpreted so as, if possible, to make it consistent with the Constitution and the paramount law.

Presser vs. Illinois, 116 U. S., 252, 269.

The overdue tax act, like the Arkansas' act to confirm tax titles, is in substance a bill of peace. The jurisdiction of the court over the controversy is founded on the presence of the property, and, like a proceeding *in rem*, becomes conclusive against all the world.

Parker vs. Overman, 18 How., 137.
Thomas vs Lawson, 21 How., 331.
McCarter vs. Neil, 50 Ark., 188.

"While the general rule in regard to jurisdiction *in rem* requires the actual seizure and possession of the *res* by the officer of the court, such jurisdiction may be acquired by acts which are of equivalent import, and which stand for and represent the dominion of the court over the thing, and in effect subject it to the dominion of the court.

Cooper vs. Reynolds, 10 Wal., 308, 317.
Pennoyer vs. Neff, 95 U. S., 714, 727.

"Jurisdiction is acquired in one of two modes: First, as against the person of the defendant by the service of process; or, secondly, by a proceedure against the property of the defendant within the jurisdiction of the court. In the latter case, the defendant is not personally bound by the judgment beyond the property in question. And it is immaterial whether the proceeding against the property be by an attachment or bill in chancery. It must be substantially a proceeding *in rem*."

Boswell's Lessee vs. Otis, 9 How., 346. 348.
Heidritter vs. Elizabeth Oil Cloth Co., 112 U. S., 294, 300-301.

In *Heidritter vs. Oil Cloth Co., supra*, it is true that it was held, as stated by appellant in his brief, page 9, that no jurisdiction was acquired because the court proceeded *in rem*, but without seizure of the land, which was at the time held adversely to the court. But this statement is misleading, as will be readily seen from reading the statement of facts in the opinion of Mr. Justice Matthews in that case. He said, at page 302: "When the proceedings were begun for the enforcement of the mechanics' lien against the premises in controversy, by the issuing of the summons and the filing of the declaration, the property over which the state court sought to exert its jurisdiction, was in the actual custody and possession of the District Court of the United States for the District of New Jersey;" and for that reason the state court could not acquire juris-

diction over the *res*—it being already in the exclusive possession of the District Court of the United States. *Ib.:* "But," said the learned Justice upon this question, *at pp. 301-302*, "the land might be bound, without actual service of process upon the owner, in cases where the only object of the proceeding was to enforce a claim against it specifically, of a nature to bind the title. In such cases the land itself must be drawn within the jurisdiction of the court by some assertion of its control and power over it. This, as we have seen, is ordinarily done by actual seizure, but may be done by the mere bringing of the suit in which the claim is sought to be enforced, which may by law be equivalent to a seizure, being the open and public exercise of dominion over it for the purposes of the suit."

Appellant's theory, therefore, that it requires *actual seizure* of the property to give the court jurisdiction in proceedings substantially *in rem*, is not sustained by the decisions of this court. Any equivalent act, such as by bill in chancery or any suit in which the claim against the property is sought to be enforced, is sufficient.

The overdue tax act was strictly a revenue act for the purpose of collecting taxes unpaid and overdue upon real estate. Whether these taxes should be collected by summary process or by judicial proceedings was a matter wholly within the judgment and discretion of the legislature of the state. This is too well settled to require argument or citation of authority; and

so long as a state, by its laws prescribing the mode and subject of taxation, does not intrench upon the legitimate authority of the Union, or violate any right recognized or secured by the Constitution of the United States, this court, as between the state and its citizen, can afford him no relief against state taxation, however unjust, oppressive or onerous.

Kirtland vs. Hotchkiss, 100 U. S., 491.
Memphis Gas Light Co. vs. Shelby Co. Taxing Dist., 109 U. S., 398.

"Whenever by the laws of a state, or by state authority, a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be for the whole state or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice, with such notice to the person or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections."

Davidson vs. New Orleans, 96 U. S., 97, 104-5.
Kentucky R. R. Tax Cases, 115 U. S., 321, 335-6.
Hagar vs. Reclamation Dist., 111 U. S., 701, 711.

The overdue tax law of Arkansas comes within this

rule, and, consequently, is not obnoxious to appellant's objection with regard to "due process of law," even though it may be "unworthy of a civilized people," as he asserts. That concerns merely the *policy* of the law, a matter with which the courts have nothing to do. The highest court of Arkansas having construed this act upon the particular question—*McCarter vs. Neil, 50 Ark., 188, 191*—this court is bound to accept the conclusion of that court.

Baltimore Traction Co. vs. Baltimore Belt R. Co., 151 U. S., 137.

III.

Appellant's third objection is that "the clerk never did enter upon the record an order as required by Section 2 of the overdue tax statute."

The record shows, *at page 21*, that this order was "duly published in the manner required by statute."

Counsel for appellant is incorrect in the statement (his brief, p. 12) that "a complete and certified transcript of the record of the Ashley Circuit Court, including the proceedings and judgment, was filed in the court below." The certificate of the clerk of the Ashley Circuit Court (*Record, p. 33*) is "that the foregoing pages of the manuscript contain a true copy of the papers and orders of record in the case of State of Arkansas on relation of W. H. Arnold vs. Certain Lands, in which taxes were alleged to be due, pending in the Circuit Court of said county, on the chancery side

thereof, as appears from the records and papers now on file in my office." This may be perfectly true and yet not be a copy of *all* the papers and orders of record.

Evans vs. Stettnisch, 149 U. S., 605.

This question was not raised in the court below. The case of *Gregory vs. Bartlett, 55 Ark., 30*, referred to by counsel for appellant, had not then been decided, and the question was not in the mind of counsel, was not raised by the pleadings, was not considered by the court, and no opportunity furnished or required to test the condition of the record of the State Court as to whether it contained the order or not. The judgment of the state court, exhibited in the court below, reciting the due publication of the order "in the manner required by statute" (*Record, p. 21*), was received by the court and parties as sufficient evidence. If it was not the best evidence, appellant should have objected. Failing to object, he thereby lulled appellee into repose and deprived him of the opportunity of offering better evidence.

Allen vs. Ozark Land Co., 55 Ark., 549, 555.

By doing this he waived the production of other evidence and gave to that offered its full force as evidence. This is the rule both at law and in equity.—*Ibid.*

Section 18 of the Overdue Tax Act provides as follows:

"Sec. 18. The strict rules of law relating to the jurisdiction of courts in special statutory proceedings shall not be applied to proceedings under this act; but all presumptions shall be in favor of the jurisdiction of the courts in which they are had, and of their regularity in all respects."

Acts of Ark., 1881, p. 72.

It is, certainly, too late to raise this question for the first time in this court. The record of the state court produced and received as evidence, shows jurisdiction. That court may be supposed to have personal knowledge of the matter and its record imports absolute verity.

Evans vs. Stettnisch, 149 U. S., 605, supra.

"It is generally thought to be better that the doctrine that the record importing absolute verity should work an occasional hardship, than that public confidence should be shaken in the stability of judicial proceedings by suffering them to be lightly overthrown; and for this reason the weight of authority in the case of a domestic judgment collaterally attacked, is that the question of notice or no notice must be tried by the court upon an inspection of the record only."

Boyd vs. Roane, 49 Ark., 411, 412 and authorities cited.

The record so far as produced or required, shows, as before stated, jurisdiction. It is not a case where want of jurisdiction appears upon the face of the

record. The fact that the jurisdiction of a court over a matter in question is dependent upon statutes, does not change the presumption in respect to its jurisdiction, where the statutory powers are brought into action in the usual form of common law or chancery proceedings.

Harvey vs. Tyler, 2 Wall., 328.

Moreover, even if it had been shown that that order was not entered upon the record of the state court, it could not affect the jurisdiction of that court in this case. That order was merely a substitute for personal service—*Gregory vs. Bartlett, 55 Ark., 30, supra*—and the State of Arkansas, from whom both appellant and appellee derive title to the lands in controversy, having appeared in the suit, as is abundantly shown by the record, thereby waived service. If the owner of the lands had appeared in the suit, he could not afterwards be heard to say that no notice had been given to him, or that the substitute for personal service, to-wit, the order to be entered upon the record by the clerk, had not been entered. Appearance waives notice. It will not do to say that the state is exempt from this rule, when it become a party to a suit, any more than an individual, and especially in a suit instituted under its laws for the collection of its revenue, as was this overdue tax suit. There is a statute in Arkansas which authorizes the county courts of the several counties of the state by proper order to call in the outstanding county warrants, etc., for cancellation,

re-issuance, etc. The statute requires the county clerk to furnish the sheriff with a true copy of the order of the court, which the sheriff shall post in the manner pointed out and also have published in "*newspapers*" of the state for a certain length of time. The publication of this order in *more than one newspaper* of the state has been held by the Supreme Court of Arkansas to be necessary to give the county court jurisdiction.

Lusk vs. Perkins. 48 Ark., 238, 246.
Allen vs. Bankston, 33 Ark., 740.

Also, by Judge Caldwell, then District Judge, in *Cissell vs. Pulaski County, 10 Fed. Rep., 891.*

Yet, in *Allen vs. Bankston, 33 Ark., supra, at page 744*, the court said: "Had appellant presented his warrants within the time fixed by the order, and submitted them to the court for examination, cancellation and re-issuance, it would have been a waiver of the insufficiency of the public notice, and had his warrants been rejected he might have appealed."

Gregory vs. Bartlett, 55 Ark., supra, was an action of ejectment by Gregory, the purchaser under an overdue tax sale, against Bartlett, the delinquent owner of the land. Bartlett had never appeared to the overdue tax suit. In the case here, the delinquent owner of the land is not a party, but both parties claim title under the State of Arkansas, which was a party to the overdue tax suit, and the state appeared to the action; consequently, any claim that the state may have previously had to the lands in controversy was divested by the

decree in that suit. This is settled by the decision of the Supreme Court of Arkansas in the case of *Miller vs. Reynolds, 13 Southwestern Reporter, 597.*

See, also, *Smithee, Comr. Etc. vs. Moseley, 31 Ark., 425.*

(On page 21 of the record, just below the list of lands, the word "creditor" is a misprision. It should be "auditor." This is apparent, as appears by reference to page 23, where "A. W. Files, Auditor of State," consents to a modification of the decree; and on pages 24-5, where "A. W. Files, Auditor of State," files exceptions to the Commissioners' report; and also in the subsequent orders of the state court set forth in the record.)

It is deemed best, for the information of the court, to set forth a part of section 1, as amended, and the whole of sections 6 and 7, of the Overdue Tax Act.

"Section 1. That hereafter any citizen of this state, who shall give security for cost, may file a complaint in equity, in the name of the state, in the court having equity jurisdiction in the county in which the lands lie, setting forth that taxes are due on lands to be therein described, or that for any reason lands lying in the county have not been assessed for any one or more years, and praying that a lien may be fixed on such lands, by a decree of the court, for such unpaid taxes, and that the lands may be sold for the payment thereof. The county court of any county may direct such complaint to be filed in the name of the county, and when

it shall be filed, in pursuance of such direction, it shall be prosecuted by the attorney for the county, or by some attorney to be retained for that purpose."—*Acts of 1881, p. 159.* The remainder of said section is immaterial for the purposes of this suit.

"Sec. 6. In all cases where the lands mentioned in the complaint, or any part thereof, have been sold or forfeited to the state, the complaint may state that fact, and the plaintiff shall cause a writ of summons to be issued to the Auditor, commanding him to be and appear in the court within twenty days from the time of the service or acceptance of service, thereof, and show cause, if any he can, why the sale to the state shall not be declared to be void, and why the lands shall not be taxed the same as if no such forfeiture had taken place; and it shall be the duty of the Attorney General to defend all such suits when the same shall be pending in Pulaski county, and of the several attorneys for the state in the other counties of the state, if they shall deem any such defense legally tenable."

"Sec. 7. In all cases where it shall be made to appear that the lands described in the complaint have been sold or forfeited to the state, the court shall inquire whether such sale or forfeiture was sufficient in law to vest a title in the state; and, if the court finds that no title passed to the state by virtue thereof, the court shall proceed in the same manner as if no such forfeiture had taken place; *provided*, that the state

may make herself a party to any such suit, and may have the same right in regard to the assertion of her title as a private person would have under the statute."

Acts of Ark., 1881, pp. 66-7.

The lands involved in this suit had been forfeited and sold to the state before the overdue tax complaint was filed in the Ashley Circuit Court, as will appear by *paragraph 4* of that complaint—*Record, p. 18;* and these sales and forfeitures were alleged to be void by *paragraph 5, Record, pp. 18, 19;* and the State acquired no title thereby—*Paragraph 5, Record, p. 19.* The decree of the court found these facts to be true.—*Record, p. 21.* Consequently, the state having made itself a party to the suit, as provided by *section 7 of the Acts, supra,* it was bound by the decree, whether there had been any publication of the order, or entry of it upon the record, or not—its appearance waiving all notice whatever. It is true that appearace does not cure the *defect of judicial power—Rhode Island vs. Massachusetts, 12 Pet., 657*—but there was no such defect here. The state entered its appearance without reservation, as shown by the record; hence the jurisdisction of the court over it was complete.

Atkins vs. Fiber Etc. Co., 18 Wall., 272.
New England Ins. Co. vs. Detroit & C. Steam Navigation Co., 18 Wall., 307.

Jurisdiction of the person is obtained by the service of process, or by the voluntary appearance of the party.

Cooper vs. Reynolds, 10 Wall., 308.

Where the action was commenced by attachment, and service had by publication, but afterwards the defendant voluntarily appeared and went to trial, the court had jurisdiction of the person.

Maxwell vs. Stewart, 21 Wall., 71.

Moreover, the state is not complaining in the matter, nor is the original owner or owners of the land. The appellant was never the owner, but claims title under deeds from the state, executed after the sale under the overdue tax proceedings and the purchase by appellee. As has been shown, the state then had no title to convey.

Miller vs. Reynolds, 13 S. W. Rep., 597, supra.
Smithee, Comr. Etc. vs. Moseley, 31 Ark., 425, supra.

Again, appellant's rights were never affected by the overdue tax proceedings, because he had no rights in the lands when they were sold under the decree in those proceedings. His title is derived from the same source as appellee's, to-wit, from the State of Arkansas, and is ~~prior~~ to it. Hence, he cannot show that the claim of the state was not good and conferred no title on appellee.

Stafford vs. Watson, 41 Ark., 17, 21, and authorities there cited.

Appellee bought the lands in controversy under the decree of a court of competent jurisdiction, in a pro-

ceeding to which he was a stranger. That decree has never been reversed or suspended. Consequently, he is protected in his purchase, even though such decree might hereafter at any time be set aside in a direct proceeding brought for that purpose.

Moore vs. Woodall, 40 Ark., 42, 48.
Boyd vs. Roane, 49 Ark., 397, 416, and authorities there cited.

IV.

The fourth and last contention of appellant is, that the state could not be made a defendant in one of its courts, and that the appearance of the auditor could lend nothing in the way of jurisdiction.

We fail to see the force of this. By reference to the sections of the act, as set forth in this and appellant's brief, it will be found that the whole scope and intention of the act was to collect taxes on lands which were overdue and unpaid, and to quiet the title to the lands which might be sold to enforce such collection. The method of doing this was purely a matter within the legislative discretion. The object of summoning the auditor, as provided by section six, is too apparent for argument. It was for better guarding the rights of the state. The suit was brought in the name of the state and was for its benefit. It was not a suit against the state in any sense. If the legislature saw proper to adopt this course to ascertain whether the state's title to lands forfeited to it for non-payment of taxes was good or bad, and to quiet the title to such

lands, we can see no manner of objection to it. As said by Mr. Justice Smith, in the case of *State, ex rel. vs. Certain Lands, 40 Ark., supra, at page 37*, speaking of the constitutionality of this act: "We do not recall any constitutional privilege, nor any principle of natural justice, which this law invades. It is certainly right that all, who in their persons or property enjoy the protection of the government, should contribute to its support in proportion to their means." But, in any event, the rights of appellant were not affected—because he had no interest in the lands pending the proceedings—and we can see no Federal question arising here, which would call upon this court to declare that the highest court of the state had incorrectly ruled upon the construction and constitutionality of a statute of the state involving a matter of purely local concern.

Commercial Bank of Cincinnati, vs. Buckingham's Ex'rs, 5 How., 317.

It is the peculiar province and privilege of the state courts to construe their own statutes, and it is no part of the functions of this court to review their decisions, except when specially authorized by statute.

Adams vs. Preston, 22 How., 473.

Congdon Mining Co. vs. Goodman, 2 Black, 574.

Scott vs. Jones, 5 How., 243.

Smith vs. Adsit, 16 Wall., 185.

Klinger vs. Missouri, 13 Wall., 257.

Murray vs. Gibson, 15 How., 421.
Nichols vs. Levy, 5 Wall., 433.
Baltimore Traction Co. vs. Baltimore Belt R. Co., 151 U. S., 137.

Nor do we understand that the objection would be tenable in this court, even if the state had made itself a party defendant in one of its courts. Appellant had no right to control the action of the state in the matter. As said by Mr. Justice Matthews, in *Clark vs. Barnard, 108 U. S., at page 447*, "the immunity from suit belonging to a state, which is respected and protected by the constitution within the limits of the judicial power of the United States, is a personal privilege which it may waive at pleasure."

See, also, *Beers vs. Arkansas, 20 How., 564.*

Under any and every view, we think the decree of the court below should be affirmed.

Respectfully submitted,

DAN W. JONES,
For Appellee.